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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF K.K.H., d.o.b. 3-14-77; **M.E.H., JR.**, d.o.b. 6-6-78; and **M.M.H.**, d.o.b. 7-27-80, Juveniles,	)	Filed June 26, 1984
S.L.W., Mother, Appellant,	)	4-157 83-1010
M.E.H., Father, Appellant.	)	

Appeal from the Iowa District Court for Hamilton County - Russell H. Hill, Judge.

Natural parents appeal from the trial court's order terminating their parental rights to their three children. AFFIRMED.

Blake Parker of Blake Parker Law Office, Fort Dodge, for appellant mother.

Charles Deppe of Brekken, Deppe & Wynia, P.C., Story City, for appellant father.

Thomas J. Miller, Attorney General, and Brent D. Hege, Assistant Attorney General, for appellee State.

Glenn W. Kumpula, Webster City, for the children (appellees).

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Natural parents appeal from the trial court's order terminating their parental rights to their three children. Each parent alleges the evidence is insufficient to show that the children could not be returned to that parent. The mother also contends that the court erred in considering evidence presented in previous CHINA (child in need of assistance) proceedings but not introduced in the termination hearing. We affirm.

S.W. and M.H. are the mother and father, respectively, of three children: K.H. (born March 15, 1977), M.H., Jr. (born June 6, 1978), and M.H. (born July 27, 1980). The parents' marriage was dissolved in September of 1981. S.W. has since remarried; this subsequent marriage has produced one child and at the time of the termination hearing, S.W. was again pregnant. On December 12, 1979, the State filed a petition to have the children then living adjudicated as children in need of assistance. The petition alleged that the children had suffered parental neglect, that the parents had failed to exercise a minimal degree of care for the children and were uncooperative in following child care suggestions which were made to them. The petition was later amended to include the third child, M.H. The three children were adjudicated to be children in need of assistance on October 17, 1980, and their legal custody was transferred to the Department of Social Services.

On November 15, 1982, the State filed this application for termination of the parental rights of both parents. After a hearing, the court entered a decree on June 17, 1983, terminating the parent-child relationship as concerns both parents under Iowa Code section 232.116(5) (1981). The court concluded that there was clear and convincing evidence that the children could not be returned to the custody of either of their parents. Both parents appealed; their separate appeals have been consolidated.

I.

We first consider a procedural issue raised by S.W. She claims that the trial

court erred in considering the record made in the previous CHINA proceedings but not specifically introduced into evidence at the termination hearing. In its conclusions of law in the termination decree, the court stated that it "can take judicial notice of the entire [CHINA] file herein and the Court is considering the entire file and record as established in this file."

We find no error. The supreme court considered and rejected a similar argument in In Interest of Adkins, 298 N.W.2d 273, 277-78 (Iowa 1980):

> Under subsection 232.114(5) [now 232.116(5)], CHINA and termination proceedings are not separate and distinct actions, but are interdependent and interwoven. The CHINA action may be a prelude or first step to termination of the parent-child relationship.
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> * * *
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> We hold it is permissible for a trial court in a subsection 232.114(5) [now 232.116(5)] termination proceeding to judicially notice the prior CHINA case, including the evidence, providing certain safeguards are followed. Papers requested to be noticed must be marked, identified, and made a part of the record. Testimony must be transcribed, properly certified, marked and made a part of the record. Trial court's ruling in the termination proceeding should state and describe what it is the court is judicially noticing. Otherwise, a meaningful review is impossible. (citations omitted)

We conclude that these safeguards have been satisfied in this case. The trial court made it very clear that it was taking judicial notice of the entire CHINA file. It did not err in doing so.

II.

The primary issue in this case relates to the merits of the termination order. Both S.W. and M.H. contend that there was no clear and convincing evidence in the record demonstrating that the three children could not be returned to the custody of each respective parent.

We recite the familiar rules governing our review of cases such as this:

> Appellate review of proceedings to terminate a parent-child relationship is de novo; thus "it is our duty to review the facts as well as the law and adjudicate rights

> anew on those propositions properly preserved and presented to us." We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but we are not bound by those findings.
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> Central to a determination of this nature are the best interests of the child. In this connection, we look to the child's long-range as well as immediate interests. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. (citations omitted)

In Interest of W.G., ____ N.W.2d ____, ____ (Iowa 1984), quoting In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

This application for termination of parental rights was brought under Iowa Code section 232.116(5) (1981):

> **232.116 Grounds for termination.** Except as provided in subsection 6, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:
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> * * *
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> 5. The court finds that:
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> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
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> b. The custody of the child has been transferred from his or her parents for placement pursuant to section 232.102 for at least twelve months; and
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> c. There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in section 232.102.

All parties concede that the conditions set forth in subsections 232.116(5)(a) and (b) have been satisfied in this case; the only question is whether, under subsection (c), there is "clear and convincing evidence that the child[ren] cannot be returned to the custody of [their] parents as provided in section 232.102." In relevant part, Iowa Code section 232.102 provides as follows:

> 3. Whenever possible the court should permit the child to remain at home with his or her parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:
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> a. The child cannot be protected from physical abuse without transfer of custody; or
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> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

After carefully reviewing the entire record, we believe the trial court was justified in terminating the parental rights of both S.W. and M.H. Neither parent appears to be either willing or able to make a sincere effort to establish a loving and meaningful parent-child relationship with any of the three children. M.H., the father, has been better at exercising his rights of visitation than has S.W., the mother. However, both parents have failed to exercise quality time visits. Both parents spend more time with other people, T.V., or toys, than with the children. S.W.'s visits have been sporadic and infrequent. She demands to see the children on short notice and when she does visit arrives late and returns the children late. She cancels visits at the last minute or even after the visit is supposed to have commenced. She frequently fails to appear for a visit without any word at all.

The children do not relate to either M.H. or S.W. as parent-child and are not close to either. They react to both as they do to any other adult and are not upset when either parent fails to appear for a visit. The children are not affectionate to either parent and do not want to stay with them. The parents are not special people in the lives of the three children.

During the entire time the children have been under the jurisdiction of the court, services have been offered to both parents. These services include family planning counseling, parental concerns, prenatal care, homemaker services, family support services, and financial counseling. S.W. has purposely absented herself from her home to avoid service people. She seems to pay mere lip service to a

desire for assistance and then avoids it. She has also given false statements to service people regarding her ability to meet with them. Both parents have refused the services offered.

In addition, neither parent during the course of these proceedings has demonstrated any real or lasting ability or desire to provide for the children's material needs. S.W.'s apartment is cluttered and dirty. Old, moldy food is permitted to accumulate and dirty dishes are commonly permitted to stand around. The smell of urine is found in the apartment. Her father does the laundry, although laundry facilities are available in the apartment building. Her father also hauls out the trash and garbage. S.W. has no outside employment and is on A.D.C. R.W., her current husband, is thirty-four years old and is totally disabled. His sole source of income is social security. M.H., on the other hand, is twenty-nine years old and unemployed. He has few marketable skills and is currently living with his mother and her brother.

We are thus left with the sad situation in which both parents profess to love their children and their desire to care for them, but have not shown either the willingness nor the desire to take on their parental responsibilities in order to demonstrate effectively that love and care. We adopt as our own the following language from the trial court's conclusions:

> Neither parent has a home to which the children can be returned. Neither parent has made suitable and reasonable plans for the future of the children. The parents cannot be trusted, either now or in the foreseeable future, to supply the children with necessaries, even if financially able to do so, or to provide the children with proper supervision.
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> . . . The parents are psychologically incapable, either from their cultural deficiency or because of their lack of desire, of caring for their children by providing even minimal care notwithstanding extensive training efforts and the furnishing of services by the Department [of Social Services].

The record is clear that, despite the parents' contentions to the contrary, there

has been no real change in the conditions that led to the CHINA adjudication in 1980. See Interest of Adkins, 298 N.W.2d at 278. Both parents were frequently warned throughout the CHINA proceedings that, unless they exhibited a marked improvement in their parenting skills and a desire to make such improvement, their parental rights would be subject to termination. We cannot afford to wait indefinitely and gamble the lives of these three children on the vague and uncertain hope that, despite all indications in the past and present to the contrary, M.H. and S.W. will develop the requisite degrees of personal maturity and parental responsibility. We agree with the trial court that there is clear and convincing evidence that the children cannot be returned to the custody of their parents under Iowa Code section 232.116(5)(c). We therefore affirm the order terminating the parental rights of both M.H. and S.W.

AFFIRMED.