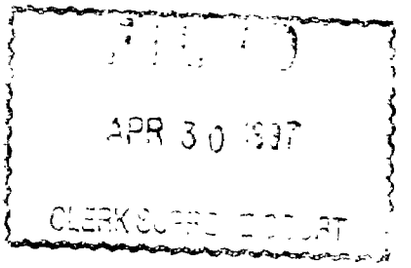
IN THE COURT OF APPEALS OF IOWA

No. 7-187 / 96-1746



IN THE INTEREST OF
L.S., C.S., and M.O., Minor Children,

M.O., Mother,
Appellant.

Appeal from the Iowa District Court for Tama County, Susan Flaherty, Associate Juvenile Judge.

Mother appeals the juvenile court's order terminating her parental rights over her minor children. **AFFIRMED.**

Allan M. Richards, Tama, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Chris Odell, Assistant Attorney General, and Brent Hereen, County Attorney, for appellee-State.

John Livingston, Gladbrook, guardian ad litem for minor children.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

HABHAB, C.J.

Marlene is the mother of Lacie, born May 17, 1990; Cody, born August 20, 1991; and Michael, born February 6, 1993. Marlene has been an enrolled member of the Sac and Fox tribe since 1992. She has a long history of alcoholism dating back to her teenage years. She has attempted treatment numerous times. Although she has had some periods of sobriety, her efforts of maintaining prolonged sobriety have failed. Additionally, she has a long history of involvement with men who have been abusive to her and the children.

Marlene formerly resided in Kentucky with Lacie and Cody. In December 1991, while residing in Kentucky, the two children were removed from Marlene's care and placed in foster care due to her neglect and excessive drinking. In February 1993, Michael was born. He and Marlene both tested positive for marijuana. Services were intensified in an attempt to keep Michael in Marlene's custody to no avail. In December 1993, law enforcement found Marlene drunk and unable to care for Michael. As a result, he was removed from Marlene's care and placed with a foster family.

In 1992 termination proceedings were instigated in Kentucky. Those proceedings were ultimately dismissed upon the court's determination that the children were subject to the Indian Child Welfare Act (ICWA). The court transferred jurisdiction and custody of the children to the Sac and Fox tribe. Marlene immediately relocated with the children to the State of Iowa.

Upon her arrival in Iowa, Marlene voluntarily received services from the Department of Human Services (the Department) until January 1995, when she left the state with Michael's father. Michael's father had a history of being physically abusive to Marlene and the children. Marlene's whereabouts were unknown until she was subsequently arrested in February 1995 for operating a motor vehicle while intoxicated and child endangerment. A preliminary breath test revealed a blood alcohol concentration of .340. The children were removed from Marlene's care and placed with an aunt.

The State and Marlene stipulated the children were in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2), 232.2(6)(g), and 232.2(6)(n) (1995) and the children were adjudicated in March 1995. In a later order, the court found the ICWA applied in this case. In April, the children were placed in foster care and have remained there since that time. In a July 1995 dispositional order, the court reversed its prior holding regarding the ICWA and determined it was inapplicable as the children were not eligible for tribal membership.

From July through October 1995, Marlene worked toward reunification with the children. She remained sober, maintained contact with the children, and was meeting her case plan goals. Sadly, consistent with Marlene's history of alcohol abuse, she relapsed in October 1995 and was committed for inpatient treatment. After her release to outpatient treatment, she did not follow through and was committed again in November. After her second release, she refused the recommended treatment

and ultimately left town with a truck driver. She had no contact with the children from October 1995 through March 1996.

The Department instigated termination proceedings in January 1996. Following an April 1996 hearing, the court terminated Marlene's parental rights to the children. The fathers' rights were also terminated and are not before us in this appeal.

Marlene appeals. She argues the court erred in its determination that the ICWA was inapplicable in this case and grounds for termination existed. She contends the county attorney should have been removed from the case because his wife had at one time been involved in Marlene's therapy. Marlene further contends the guardian ad litem should have been removed because he had represented Michael's father in a past criminal proceeding.

I. Standard of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children, which includes both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> We consider what the future 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Applicability of the Indian Child Welfare Act. The ICWA is applicable to a "child custody proceeding" involving an "Indian child." 25 U.S.C. § 1903(1), (4). The ICWA defines "Indian child" as follows:

> [A]ny unmarried person who is under the age of eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

25 U.S.C. § 1903(4).

An Indian tribe has complete authority to determine tribal membership except in specific instances.[1] *Baciarelli v. Morton*, 481 F.2d 610, 611 (9th Cir. 1973). Article II of the Constitution and Bylaws of the Sac and Fox Tribe of the Mississippi in Iowa addresses tribal membership.

> ARTICLE II -- MEMBERSHIP
>
> Section 1. The membership of the Sac and Fox Tribe in Iowa shall consist of the following persons:
>
> (a) All persons whose names appear on the official census roll of January 1, 1937, of the Sac and Fox Tribe in Iowa except those designated in the said roll. . . .
>
> (b) All children born since the completion of said roll whose father is a member of the Tribe and whose parents were

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[1] The United States Secretary of the Interior has jurisdiction to determine tribal membership for the purpose of distributing federal trust assets. *Baciarelli v. Morton*, 481 F.2d 610, 611 (9th Cir. 1973).

> residing on the reservation at the time of the birth of said children
>
> (c) All children born since the completion of the roll whose father is a member of the Tribe but whose parents were not residing on the reservation at the time of the birth of said children may be admitted to membership by a majority vote of the Tribal Council.
>
> Section 2. Persons who are descendants of members of this Tribe but not entitled to membership under Section 1 may be adopted into the Sac and Fox Tribe by a majority vote of the Tribal Council, providing that such persons have resided on the reservation for a period of five years.

Although Marlene's membership is not disputed, the record reflects the only period of the children's residence on the reservation was from February 1995 to April 1995 with their aunt. The trial court noted the conditions precedent to membership may never take place. An individual who has not completed the requirements for tribal enrollment cannot be considered eligible for tribal enrollment. *See U.S. v. Lawrence*, 51 F.3d 150 (8th Cir. 1995). We affirm the district court finding that the ICWA does not apply to the case at hand as none of the children are eligible for membership under the criterion set forth by the tribe.

III. Clear and Convincing Evidence. Marlene contends there is not clear and convincing evidence within the record to support the termination of her parental rights. We reject her contentions.

The record reflects Marlene has a long history of severe and chronic substance abuse. Marlene has failed to adequately address her problems with substance abuse to her own detriment and the detriment of the children. Her ongoing problems with

alcohol jeopardizes the children's safety and well-being as she has continually failed to provide a safe environment for them. Past behavior of a parent is an important factor to consider when determining whether or not termination of parental rights is warranted. *In re M.H.*, 367 N.W.2d 275, 278 (Iowa App. 1985).

Marlene has been involved in numerous substance abuse treatment programs. While at times she has been able to maintain sobriety for a short period, she has a long history of relapse. Insight into what the future holds for a child if the child is returned home is gained from a parent's past performance. *In re Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

We commend Marlene's attempts to conquer her substance abuse problems and encourage her efforts toward sobriety. However, the record establishes the children cannot be returned to her at this time. We will not require children to endlessly await the maturity of their natural parent. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)). We must reasonably limit the time for parents to be in a position to assume care of their children because patience with

parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96.

These children need a safe, stable home and a nurturing environment which Marlene has been incapable of providing in the past and shows no capability of providing in the future. Marlene has had more than ample time to make the necessary changes in her life to assume the care of the children but has failed to do so. We affirm the juvenile court's termination of her parental rights. In our de novo review of the record, we find clear and convincing evidence within the record established the best interests of the children mandate termination of Marlene's parental rights.

IV. Services Provided by the Department. Marlene contends the Department failed to provide her with reasonable services. She does not, however, specify which services were denied or were insufficient.

Reasonable services must be provided in an attempt to preserve the family unit before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). However, a parent must raise this issue when the services are offered prior to the termination hearing. *Id.*; *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). A case plan for each child is an integral element of the Department's implementation of reasonable efforts to reunify the family. *In re L.M.W.*, 518 N.W.2d at n. 4. Challenges to the plan for reunification should come when the plan is entered. *Id.* at 807.

The record reveals Marlene received extensive services while in the State of Kentucky. While she received therapy with the Tama County Mental Health clinic, her participation was sporadic. The Department has made available substance abuse treatment, family preservation services, homemaker services and parenting skill development for Marlene. Marlene has not availed herself of the benefits of these services, nor did she at any time request additional or alternate services prior to the termination hearing. The social worker involved in the case testified Marlene had failed to successfully complete any of the goals or recommendations contained within her case plan.

In our de novo review of the record, we find reasonable services were provided to Marlene prior to termination of her parental rights. We find there is clear and convincing evidence that termination of Marlene's parental rights is in the best interests of the children.

*V. **Miscellaneous.*** We have considered Marlene's allegations that the trial court erroneously overruled her motions to disqualify the county attorney and the guardian ad litem. In our de novo review, we find these allegations are without merit.

AFFIRMED.