IN THE COURT OF APPEALS OF IOWA

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No. 3-402 / 92-2036

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF A.M., A Minor Child,

M.M.,

Mother-Appellant.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Juvenile Court Judge.

M.M. appeals from the district court's termination of her parental rights to minor child, A.M. **AFFIRMED.**

Randy G. Sargent, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Heather Dickinson, Assistant County Attorney, for appellee-State.

David Adams, Assistant Juvenile Defender, Des Moines, guardian ad litem.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

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DONIELSON, P.J.

M.M. is the mother of six sons born between April 1986 and August 1992. Her parental rights to four of them were terminated in 1992. The youngest, born cocaine-affected, is in foster care. Only one child is involved in the case at bar: the eldest, A.M., born April 30, 1986.

The family first came to the attention of Polk County Juvenile Court when the father, J.W., was found to have committed a delinquent act (causing injuries to one of A.M.'s siblings) and was issued a no-contact order. However, M.M. resumed living with J.W. and their violent relationship continued. A case permanency plan noted several problems: two boys' failure to thrive, M.M.'s resistance to services, and her suspected substance abuse. A.M. was adjudicated CINA in December 1990.

By July 1991, CASA and Des Moines Child and Adolescent Guidance Center were recommending that A.M. be removed from the home. M.M. had exposed A.M. to numerous and unfit homes, she was unwilling to complete a chemical dependency evaluation, did not attend child development sessions, was irregular in her involvement with A.M.'s therapy, and CASA was unable to locate her or A.M. for a period of time in June. It was in June 1991 that M.M. gave birth to her fifth son. He was born addicted to cocaine.

At an adjudication hearing, A.M. was placed with his maternal aunt under the supervision of DHS.

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M.M. entered IUAP Chemical Dependency Center but was expelled once for alcohol use and finally discharged for using marijuana. She later admitted using crack cocaine for three years and shoplifting to maintain her $200-a-day habit.

Since A.M. was missing school and therapy, he was placed with another maternal aunt. His behavior did not improve, however, and the school was concerned A.M. would harm himself or others. The court ordered that A.M. be placed in the Pre-Adolescent Unit at Iowa Lutheran Hospital. M.M. did not attend the hearing.

A.M. was finally placed in foster care in March 1991. In April, M.M.'s parental rights to four of her boys were terminated. She did not appear at the hearing.

In August 1992, M.M. gave birth to another cocaine-affected baby. She was offered visitation with A.M. between February and November of 1992 but only visited four times--three times in May and June while in treatment and once in October after the petition to terminate her rights was filed.

On October 14, 1992, a petition to terminate M.M.'s parental rights to A.M. was filed. At the hearing, the DHS worker testified that for much of the time she did not know where M.M. was or how to reach her. She reported that M.M. had not completed aftercare, had not lived in her own apartment since June 1991, and three of the four visits with A.M. only occurred because she was able to take A.M.

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to M.M. CASA reported that A.M. was adoptable and doing well in foster care. A.M.'s teacher, principal, and nurse reported a remarkable change in A.M.'s behavior. A.M.'s therapist reported exceptional progress since placement in foster care. The district court terminated M.M.'s parental rights to A.M. pursuant to Iowa Code sections 232.116(1)(d) and (1)(e) (1993).

M.M. appeals. She argues that she was not given any real or meaningful opportunity to maintain or pursue any relationship or contact with A.M. She further argues that the legal files and exhibits from the previous termination hearings on A.M.'s siblings were admitted in mass, as two exhibits, over her objection, without further comment or explanation. She argues the proper procedure of marking and identifying each record was not followed.

The State argues, among other things, that error has not been preserved on the marking and identifying of judicial notice documents.

Our review of termination proceedings is de novo. Iowa R. App. P. 4; In the Interest of L.L., 459 N.W.2d 489, 493 (Iowa 1990). We give weight to the findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. In re A.M.S., 419 N.W.2d 723, 726 (Iowa 1988). Our paramount concern is the long-term best interest of the child. Id.

Our statutory termination provisions are preventative as well as remedial. In re Dameron, 306 N.W.2d 743, 745

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(Iowa 1981). Child custody should be quickly fixed and little disturbed. In re Kester, 228 N.W.2d 107, 110 (Iowa 1975). Children should not remain in parentless limbo indefinitely. Id. Justice Harris succinctly stated:

> There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.

In the Interest of A.C., 415 N.W.2d 609, 615 (Iowa 1987).

Appellant first argues that she was not "given any real or meaningful opportunity to maintain or pursue any relationship or contact with the child." We disagree. The record shows that A.C. was placed in foster care on February 21, 1992. Appellant was offered weekly visits but did not contact or visit the child until May 18, 1992, when he was brought to her by her DHS worker, Karla McHenry. M.M. saw the child twice more while in treatment, on June 11th and June 18th. Appellant left treatment on June 30th, but her next visit was not until October 20th, almost four months later and nearly a week after the State filed a petition to terminate her parental rights.

After the October 20th visit, Ms. McHenry asked M.M. to call on the 26th to find out how the visit had affected A.M. emotionally and to arrange the next visit. The evidence about the phone calls is in some dispute. Appellant testified she called Ms. McHenry several times, was unable to reach her, left her uncle's number for return

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messages on her uncle's answering machine, and received no return calls or messages. Ms. McHenry testified she received three calls from M.M. on October 26, 28 and 29, attempted to return the calls, and received no answer at the number given by M.M. The next contact was a phone call by M.M. on November 5. M.M. left a message that she would be at the pretrial conference on November 6th. She did not attend the pretrial conference. The record does not contain evidence of any further attempts by M.M. to contact Ms. McHenry or to visit A.M. before the termination proceeding on December 1, 1992. After a careful examination of the record as a whole, we find Ms. McHenry's testimony more credible.

The record clearly and convincingly shows that appellant had only four visits with A.M. during more than nine consecutive months before the termination proceeding. Three of the visits occurred within a one-month period while in treatment. That the fourth did not occur until just after the petition to terminate parental rights was filed suggests to us some relationship between the two. We hold that M.M. did not maintain significant and meaningful contact with A.M. during the nine months prior to the termination proceeding, even though she had the opportunity. Therefore, the court correctly terminated her parental rights pursuant to Iowa Code section 232.116(1)(d).

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The State's petition to terminate M.M.'s parental rights to A.M. also asked that they be terminated pursuant to section 232.116(1)(e). The State claimed that A.M. could not be returned to M.M.'s custody as provided in section 232.102. Appellant asserts that no reference was made to that section at the termination hearing. We find no error. Appellant had notice from the petition of allegations concerning both section 232.116.(1)(d) and 232.116(1)(e). The State introduced evidence at the hearing concerning M.M.'s housing, continued need of treatment for substance abuse, and her own admission that it would not be in A.M.'s best interest for him to be returned to her care at that time. That evidence clearly and convincingly satisfies the requirements of section 232.116(1)(e). We agree with the juvenile court that "the allegations of the State's Petition filed October 14, 1992 have been fully sustained by clear and convincing evidence for the reasons set forth on the record."

Appellant also claims the court erred in admitting previous case records and did not mark and identify each separately. Reversible error may not be predicated upon an objection which does not tell the court the ground upon which it is based. Pastour v. Kolb Hardware, 173 N.W.2d 116, 124 (Iowa 1969); Daniels v. Bloomquist, 138 N.W.2d 868, 874 (Iowa 1965). We will not address issues raised for the first time on appeal. Long v. Long, 255 N.W.2d 140, 144 (Iowa 1977); In the Interest of Robbins, 230

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N.W.2d 489, 494 (Iowa 1975). Appellant did not raise the issue of procedural safeguards with reference to the records and exhibits from the other siblings' proceedings. For the foregoing reasons we decline to address it on appeal.

Appellant properly preserved her objection to the admission of the siblings' records so we address the merits of appellant's objection. Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985).

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. 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 R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745). Records and exhibits from the siblings' CINA and termination proceedings can be a valuable source of evidence of the parent's past performance as we seek to determine the quality of care the parent is capable of providing in the future. We agree with the juvenile court that they should be admitted.

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In addition, our statutory grounds for termination of parental rights show the legislature's intent that we consider proceedings related to or actions directed toward siblings. Iowa Code §§ 232.116(1)(c), (f), and (i) (1993). This intent clearly favors admitting the siblings' records. We agree with the juvenile court's ruling on the objection.

We also note that in our de novo review of the record, without considering the siblings' files and exhibits, we find clear and convincing evidence that M.M.'s parental rights to A.M. should be terminated pursuant to Iowa Code sections 232.116(1)(d) and (e). Accordingly, the judgment of the juvenile court terminating M.M.'s parental rights is affirmed.

AFFIRMED.