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IN THE COURT OF APPEALS OF IOWA

No. 3-216 / 92-2037

IN THE INTEREST OF

T.E. and **J.E.**, Minor Children,

D.E., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn, Judge.

D.E. appeals the juvenile court's termination of her parental rights with regard to minor children, T.E. and J.E. **AFFIRMED.**

Sarah W. Cochran of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; and R. Timothy Starken, Assistant County Attorney, for appellee-State.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

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DONIELSON, P.J.

D.E. appeals a judgment of the juvenile court terminating her parental rights with regard to her minor children, T.E. and J.E.

In 1985, D.E. gave birth to T.E. D.E. divorced T.E.'s father in 1986. In 1987, a Tennessee child abuse report which alleged T.E. had physically abused D.E. was filed. T.E. had been hospitalized due to severe bruising of her eye, stomach, buttocks, and legs. T.E. was removed from D.E.'s home and in May 1988 she was placed with her maternal grandmother in Iowa.

D.E. remained in Tennessee and in 1988 she gave birth to J.E. Shortly after J.E.'s birth, D.E. moved to Iowa with J.E. D.E. remarried in 1990, but separated from her husband less than one year later. In January 1991, D.E. became involved with a new boyfriend. In February 1991, J.E. discovered the boyfriend's body after he committed suicide by hanging. Following that incident, D.E. committed herself to a mental health unit and placed J.E. in foster care.

In March 1991, D.E. stipulated to the adjudication of T.E. and D.E. as children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (1989). The court ordered T.E. remain in her grandmother's custody and J.E. returned to her mother with continued supervision of the Department of Human Services (DHS). The court ordered

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D.E. to receive a substance abuse evaluation and ordered D.E. and the children to undergo psychiatric evaluations.

In July 1991, a dispositional hearing was held. The mother testified she believed J.E. had been sexually abused by the boyfriend who committed suicide and that T.E. had been similarly abused by her second husband. Both children had been exposed to physical abuse as well. D.E. also had suffered sexual abuse as a teen-ager. As a result of this testimony, several evaluations, and the fact D.E. had recently attempted suicide, the court concluded J.E. could not be protected from harm in her mother's home. The court ordered J.E. placed in foster care. The court also ordered D.E. to participate in a substance abuse program, receive treatment for sexual abuse, and continue with DHS supportive services. Visitation was to be provided at DHS's discretion.

Review hearings were held in August 1991 and February 1992. In August 1991, the court placed T.E. in foster care. The court found D.E. had maintained visitation with J.E, but had not been cooperative with DHS services. D.E. had been in a bar fight and had become involved with a new boyfriend. At the February 1992 hearing, the court found D.E. was participating with services and was improving her parenting abilities. She had recently completed training as a CNA (certified nurses' assistant) and was employed full-time. However, the agency from which D.E. was receiving substance abuse treatment reported D.E.'s

motivation appeared "external" and that she had missed several appointments. D.E. continued to refuse to discuss the sexual abuse of her daughters with their therapist. D.E. was also living with her new boyfriend.

Another review hearing was held in August 1992. Since the February 1992 hearing, D.E. had moved out of the house she shared with a boyfriend, lived in at least two places with another boyfriend, was kicked out of her brother's home following an argument, and was living with a girl friend. Also during this period, D.E. assaulted her last boyfriend's new girl friend and that boyfriend reportedly threatened D.E. with a knife. From June 11 through August 10 of 1992, D.E. did not visit the children. The court found D.E.'s participation in DHS services had been "sporadic and generally non-productive." The court continued foster care placement and ordered DHS to prepare a petition for termination.

A termination hearing was held in October 1992. At trial, the State presented evidence that D.E. had problems with abusive relationships, violent altercations, and reliance on drugs and alcohol. In the three months prior to the October hearing, D.E. kept no appointments with her mental health counselor. She never completed in-patient substance abuse counseling. In November 1992, the juvenile court terminated D.E.'s parental rights pursuant to Iowa Code section 232.116(1)(e) (1991).

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D.E. now appeals. She contends there was insufficient evidence for termination of her parental rights under Iowa Code sections 232.116(1)(e) and (k) (1991).

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). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

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).

I. **Section 232.116(1)(e).** D.E. first contends the State did not establish, by clear and convincing evidence, the elements of section 232.116(1)(e).

Iowa Code section 232.116(1)(e) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

It is undisputed the children were previously adjudicated CINA. T.E. has been placed outside of D.E.'s home since May 1988 and J.E. has been placed outside of D.E.'s home since July 1991. Therefore, the issue on appeal relates only to section 232.116(1)(e)(4).

The criteria for determining whether a child may be returned to the home is similar to the statutory criteria for determining whether a child should be removed from the home. In re M.W., 458 N.W.2d 847, 859 (Iowa 1990). Statutory criteria for determining whether a child shall be removed from the home include whether "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." Id. (quoting Iowa Code section 232.201(4)(b)). If any of the grounds listed in Iowa Code section 232.2(6) (1991) can be established by clear and convincing evidence, there is a sufficient basis for termination.

In its order terminating D.E.'s parental rights, the juvenile court gave considerable weight to the testimony of

David Wells, a caseworker who had been assigned to D.E.'s case since January 1989. Wells testified to D.E.'s consistent failure to cooperate with the services and counseling offered to her. He further testified to D.E.'s long-standing pattern of engaging herself in abusive relationships which threatened both D.E. and her children. Denise Willis, a family therapist, testified to D.E.'s failure to follow through with counseling. Willis believed D.E. needed to address problems dealing with her childhood sexual abuse, her inability to control her anger, and the abusive relationships in which she had become involved.

Admittedly, D.E. has made some progress since the time of the original CINA adjudication. D.E. has received her CNA certification and has maintained full-time employment. D.E. testified she has maintained sobriety since March 1991. However, these improvements do not assure the children can safely be returned to D.E.'s care. D.E.'s living conditions remain very unstable. Since February 1992, she has lived with two different boyfriends, lived with her brother, lived with a girl friend, and was living in a hotel at the time of the termination hearing. She missed two months of visitation with her children in the time just prior to the termination hearing.

Most importantly, D.E. has never effectively dealt with her inability to control her anger and avoid abusive relationships. D.E. continues to be emotionally unstable and she has given no clear indication of when, if ever, she

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will be ready to resume parenting J.E. and T.E. These children should not be forced to endlessly await the maturity of their mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id. Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

A great deal of patience and effort has been expended in the attempted reunification between D.E. and these children. However, D.E. has failed to demonstrate an ability to care for the children in a safe manner. We find there was clear and convincing evidence to support the termination of D.E.'s parental rights of J.E. and T.E. under section 232.116(1)(e).

II. **Section 232.116(1)(k).** D.E. also contends there was not sufficient evidence to support the termination of her parental rights under Iowa Code section 232.116(1)(k).

In its order, the juvenile court only terminated D.E.'s parental rights pursuant to section 232.116(1)(e). We have found sufficient grounds exist under that particular section. Therefore, we will not address this issue.

The costs of this appeal are taxed to D.E.

For the reasons stated, we affirm the judgment of the juvenile court.

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AFFIRMED.

Habhab, J., concurs; Sackett, J., specially concurs without opinion.