FILED
AUG 27 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-203 / 91-1942

IN THE INTEREST OF J.B., J.B., J.B., J.B., J.B., and J.W.,
Minor Children,

P.W.R., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Washington County, Michael R. Stewart, District Associate Judge.

The mother of six children appeals a juvenile court decision termininating her parental rights. **AFFIRMED.**

Leslie D. Lamping of Day & Meeker, Washington, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; and Judy Sheirbon, Assistant Attorney General, for appellee State.

Richard S. Bordwell of Bordwell Law Office, Washington, guardian ad litem for the children.

Heard by Oxberger, C.J., and Habhab, J., and McCartney, S.J.* Schlegel, J., takes no part.

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, J.

FACTS

This case concerns the interests of six children[1]. We will refer to the children as Jenny Brown, born December 27, 1976; John Brown, born June 22, 1978; Joe Brown, born March 4, 1980; Jill Brown, born December 10, 1981; Jodi Brown, born September 20, 1983; and Jean White, born November 27, 1984. D.B. is the father and P.R. is the mother of Jenny, John, Joe, Jill, and Jodi. M.W. and P.R. are Jean's parents. P.R. and D.B. were married, but the marriage has been dissolved.

On July 24, 1989, the State filed a petition alleging the six children were children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(g). The petition alleged the parents failed to exercise a minimal degree of care in supplying the children with adequate food, clothing, and shelter and refused means available to provide such essentials. Specifically, on June 27, 1989, a social worker visited the children's home and made the following observations: the stairs to the upstairs had two broken walkboards; one of the bedrooms had a broken window without a screen or glass; broken glass was lying on a mattress in the bedroom; there was a five-foot high pile of dirty laundry in the living room area; clean laundry was

---

1. The five oldest children have the initials J.B. The youngest child has the initials J.W. We will not use the real names of the children.

not observed anywhere in the home; the toilet and bathtub did not work properly; all of the children appeared dirty; and there were hundreds of flies throughout the home.

On August 10, 1989, attorney Richard S. Bordwell was appointed guardian ad litem for the children. An adjudicatory hearing was held. P.R. and M.W. were at the hearing, but D.B. was not present. Upon commencement of the hearing, P.R. admitted the children were in need of assistance based upon the facts set out in the petition. M.W. accepted the admissions of P.R. The juvenile court adjudicated the children to be CINA pursuant to Iowa Code section 232.2(6)(g). A founded Illinois child abuse report against P.R. resulted in her returning to Iowa and the October 1989 CINA adjudication.

A dispositional hearing was held on November 9, 1989. The juvenile court found the girls (Jenny, Jill, Jodi, Jean) could not be returned to P.R.'s care. The court ordered custody of the four girls be transferred to DHS for placement in foster care. P.R. retained custody of John and Joe. However, on December 8, 1989, P.R. voluntarily placed the boys in foster care.

In its dispositional order, the court ordered P.R. to undergo a mental examination and a chemical dependency evaluation. She was further ordered to participate in the Family Preservation Project. The court ordered DHS to provide services to the family. The court also ordered a

home study of D.B.'s home in Indiana to determine the possibility of placing the children with him.

The court-ordered family services could never be initiated because P.R. failed to attend numerous appointments and continued to live with various friends and out of her car, rather than obtaining adequate housing as required for the services. P.R. also failed to cooperate in obtaining the mental and chemical dependency evaluations. The home study was never done because D.B. moved and left no forwarding address.

From December 8, 1989, until January 10, 1990, P.R. did not contact DHS. She visited the children on January 26, 1990. Thereafter, contact between P.R. and DHS was sporadic. Neither D.B. or M.W. has had any contact with the children since placement in foster care. On June 14, 1990, a dispositional review hearing was held. None of the parents attended the hearing. The juvenile court ordered custody of the children remain with DHS and ordered visitation at the discretion of DHS.

From late 1989 to March 1990, P.R. was living with her former husband, M.W. In March 1990, P.R. left Iowa and moved to Carson City, Nevada, to get away from M.W. In April 1990, she voluntarily rejoined M.W. in Bakersfield, California. P.R. and M.W. were together from April 12, 1990, until she separated from him on October 13, 1990. P.R. claims she could not contact her children during this period because she was held against her will in M.W.'s

truck. From March 5, 1990, until March 13, 1991, DHS could not locate P.R., nor did P.R. make any contacts with DHS or her attorney.

On March 13, 1991, P.R. contacted DHS and requested visitation. The request was initially denied. On March 14, 1991, P.R. filed a request for hearing. On July 29, 1991, the State filed a petition to terminate the parental rights of P.R., D.B., and M.W. The State alleged the parental rights should be terminated pursuant to Iowa Code sections 232.116(1)(b), 232.116(1)(c) and 232.116(1)(d).

On September 24, 1991, P.R. filed a request for visitation. On October 30, 1991, and November 5, 1991, a hearing was held on the petition for termination. The guardian ad litem appeared on behalf of the children. M.W. appeared in person. P.R. appeared with her counsel. D.B. entered no appearance. D.B., the father of the five oldest children, and M.W., the putative father of the youngest child, consented to the termination of their parental rights.

On November 21, 1991, the juvenile court entered an order terminating the parental rights of P.R., D.B., and M.W. The juvenile court found clear and convincing evidence P.R. and D.B. abandoned and deserted the children. The juvenile court rejected P.R.'s explanation that M.W. would not allow her to contact the children. The juvenile court found by clear and convincing evidence the

conditions which existed when the children were adjudicated CINA continued to exist despite the services offered. Finally, the juvenile court found there was no evidence the termination would be detrimental to any of the children due to closeness of the parent-child relationship.

P.R. has filed this appeal. Neither father has appealed. The guardian ad litem for the children filed a separate brief and concurs with the termination order. We affirm.

SCOPE OF REVIEW

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, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988).

In the past, the courts have recognized that parental interest in the integrity of the family unit exists. Dameron, 306 N.W.2d at 745. However, this interest is not absolute and may be forfeited by certain parental conduct. Id. Because the State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. Id. (citations omitted).

ANALYSIS

P.R. claims the district court erred in finding clear and convincing evidence existed as to the elements of Iowa Code sections 232.116(1)(b), 232.116(1)(c) and 232.116(1)(d). She further claims the district court erred in not appointing both counsel and a guardian ad litem for the children. We disagree with these assertions.

We adopt the following findings of the juvenile court as our own:

> The Court finds that the mother has had no contact with the children since January 26, 1990. . . . At the time of the December 12, 1990, Case Permanency Plan filed February 12, 1991, the mother's whereabouts were unknown. . . . The four girls have remained in the care of the same foster family since their initial placement on November 14, 1989. The two boys have remained in the care of the same foster family since their

initial placement on December 8, 1989. Each of the children has become integrated into their foster families to the extent that their familial identity is with their foster families. In each case the foster families are able and willing to permanently integrate the children into their families.

The mother was living with her then former husband . . . [M.W.] in the Letts, Iowa, area from late 1989 to March of 1990. In March of 1990 the mother left Iowa and moved to Carson City, Nevada, to get away from . . . [M.W.]. . . . The mother and . . . [M.W.] remained together until October 13, 1990.

During the time that the mother and . . . [M.W.] were together from April 12, 1990, to October 13, 1990, . . . [M.W.] drove a truck out of Grinnell, Iowa. The testimony that the mother could not contact her children because she was held against her will in a truck by . . . [M.W.] is not credible. The mother in her own testimony admitted that on at least one occasion she remained with a friend in Grinnell while the defendant was out on the road.

From the time of her separation from . . . [M.W.] on October 13, 1990, until September 16, 1991, the mother made no effort to contact her children. . . . The mother's explanation for her failure to contact her children, her lawyer, or the Department of Human Services during this time is that . . . [M.W.] had told her that he heard her parental rights were terminated. Taking the mother's story as true, her willing acceptance of what is best characterized as a rumor is proof of the mother's intention to abandon her children. It is clear from the record that the mother had no intention of ever seeing her children again. In March of 1991 the mother was contacted by her attorney and she then made contact with the Department.

I. Iowa Code Section 232.116(1)(b).

Under Iowa Code section 232.116(1)(b), the court may order the termination of parental rights if it finds "there is clear and convincing evidence that the child has been abandoned or deserted."

> "Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (1991).

There are two elements necessary to establish abandonment: 1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting to the extent practical and feasible in the circumstances is required. Id. It is not enough to subjectively maintain an interest in the child. Id.

> "Desertion" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

Iowa Code § 232.2(6A) (1991).

We find there is clear and convincing evidence P.R. abandoned and deserted her six children. We find, even if the mother's version of events was believed, the fact remains the children's last face-to-face contact with their mother was in January 1990. She requested but did not follow through with a visit in March 1990 and then

disappeared until March 1991. From March 1991 until October 1991, P.R. made no reasonable efforts to request visitation from the court, and she made no efforts to meet with the caseworker to arrange and complete the court-ordered evaluations ordered at the beginning of the case. The record also clearly establishes P.R. left Iowa without informing her attorney or DHS of her whereabouts and made virtually no effort to contact or remain in touch with her children. At trial, P.R. admitted she did not attempt to phone her children or her attorney. We find the State has proved the elements of Iowa Code section 232.116(1)(b).

II. Iowa Code Section 232.116(1)(c).

Under Iowa Code section 232.116(1)(c), the court may order the termination of parental rights if it finds both of the following have occurred:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(c) (1991).

P.R. concedes the elements of section 232.116(1)(c)(1) have been met. There is also no complaint services were not offered or received. The disputed issue is whether the conditions continued to exist despite the offer or receipt of services as required in section 232.116(1)(c)(2).

The children were adjudicated CINA because P.R. failed to exercise a minimal degree of care in supplying the children with adequate food, clothing, and shelter and refused means available to provide such essentials. Court-ordered Family Preservation Services, Family Centered Services, and Homemaker Services were offered to P.R. but could never be initiated because she moved around so frequently and failed to obtain adequate housing. P.R. also failed to cooperate with the caseworker in arranging and completing the court-ordered mental and chemical dependency evaluations.

After reviewing the record, we conclude the circumstances which led to the CINA adjudication continue to exist despite the effort by DHS to provide services. The record clearly shows P.R. continued to lead an unstable lifestyle of frequent moves and living with numerous friends and relatives. P.R. was given an opportunity to receive services, and she virtually avoided all contact with DHS. In fact, P.R. did not notify DHS of her numerous address changes. P.R. did not respond to attempts by DHS to contact her by phone or through the mail. On the rare occasions P.R. did correspond with DHS or the court, she

refused to cooperate in scheduling and participating in the various services. We find there is clear and convincing evidence of P.R.'s lack of care and concern for her children and their welfare. P.R. has adamantly refused to comply with the court-ordered services. We find the State has proved the elements of Iowa Code section 232.116(1)(c).

III. Iowa Code Section 232.116(1)(d).

Under Iowa Code section 232.116(1)(d), the court may order the termination of parental rights if it finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

Iowa Code § 232.116(1)(d) (1991).

The facts clearly establish the elements contained in subparts (1) and (2) of this section have been met. P.R. does not dispute this. In her challenge under this section, P.R. does not even allege she maintained significant and meaningful contact with the children during the previous six months. Her sole contention is there is no evidence to show she failed to make reasonable efforts to resume care of the children despite having been given

the opportunity to do so. She argues she was never given an opportunity to resume care of the children.

At the dispositional hearing on June 14, 1990, the court and the parties received the Case Permanency Plans. These plans outlined P.R.'s responsibility for making changes necessary to resume care of the children. A few examples of the stated responsibilities included the following:

> The mother will demonstrate her ability and willingness to care for the children in a concerned and caring manner.
>
> [The mother] will insure the children receive adequate medical attention, medications, and proper follow up care for all medical needs.
>
> [The mother] will insure the children receive daily baths and have clean clothing available for their needs. The family home will be kept in a clean and hygienic manner and laundry will be done frequently.
>
> [The mother] will insure there are adequate foods in the home and insure/prepare nutritious means three times daily . . . .
>
> [The mother] will insure proper supervision at all times.

We find the objective of the Case Permanency Plans was to help P.R. address and correct some significant parenting problems and ultimately reunite P.R. with her children. P.R. failed to comply with the responsibilities detailed in the plans. She also failed to maintain any meaningful contact with the children. P.R. admitted being told to seek the court's permission for visitation, yet she made no apparent efforts to do so.

We are unable to find persuasive evidence P.R. made any serious attempts at correcting the problems which resulted in the children's placement in foster care. P.R. at no time requested a home study. From March 1991 to May 1991, the caseworker attempted to meet with P.R. to discuss the suitability of her home for visits. However, such a meeting never occurred because P.R. refused to cooperate with DHS.

P.R. has had numerous opportunities to maintain contact with the children and resume care of them. Despite being given numerous opportunities, P.R. has failed to make reasonable efforts to correct her parenting problems and resume caring for her children. We find the State has proved the elements of Iowa Code section 232.116(1)(d).

IV. Appointment of a Guardian Ad Litem.

P.R. contends the district court erred in not appointing both counsel and a guardian ad litem for the children. In light of the recent Iowa Supreme Court decision, In re G.Y., No. 90-1814, slip op. (Iowa June 17, 1992), we are unable to conclude the district court should have appointed an attorney for the children in addition to a guardian ad litem. In G.Y., the court stated separate counsel may be appointed in addition to the guardian ad litem if there is a potential conflict. Id. at 5-6. However, otherwise the appointment of counsel and a

guardian ad litem is unnecessary and would be a duplication of services. Id.

The court appointed attorney Richard S. Bordwell as guardian ad litem for the six children. Mr. Bordwell actively filled the roles of both the guardian ad litem and counsel for the children. It is clear Mr. Bordwell acted in a dual capacity to advocate the best interests of the children. There is no evidence a potential conflict existed and a separate attorney should have been appointed.

CONCLUSION

We find the requirements of Iowa Code sections 232.116(1)(b), 232.116(1)(c), and 232.116(1)(d) have been met and the parental rights of P.R. should be terminated. We hold it is in the best interests of the children to terminate the parental rights of their mother. After considering all issues presented, we affirm the district court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.