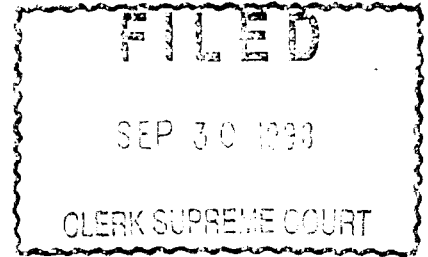


IN THE COURT OF APPEALS OF IOWA

No. 8-447 / 98-554



IN THE INTEREST OF A.D.Z., Minor Child,

M.J.Z., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

Mother appeals the juvenile court's order terminating her parental rights.

AFFIRMED.

Kay E. Dull, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Marleen J. Loftus, Assistant County Attorney, for appellee-State.

John Polifka of the Juvenile Law Center, Sioux City, guardian ad litem for minor child.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

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VOGEL, J.

Factual setting. Melissa, the mother of Amber, appeals the termination of her parental rights. She asserts the State violated a voluntary foster care placement agreement, violated due process, did not present clear and convincing evidence to support terminating her parental rights, and that termination is not in Amber's best interest. We affirm.

Amber, Melissa's sixth child, was born in December 1996 while Melissa was incarcerated. Melissa's parental rights to her five prior children have been terminated previously and are not at issue in this appeal. At the time of the termination hearing, Melissa was expecting her seventh child. Melissa began having children at age fifteen, when she was herself a child in need of assistance (CINA) under juvenile court jurisdiction.

At Amber's birth, Melissa executed a voluntary foster care placement agreement with the Department of Human Services (DHS) for a term of thirty days. She did not renew the agreement when it expired on January 11, 1997. On January 16, 1997, the State filed a CINA petition. The court placed Amber in the temporary care, custody, and control of DHS pending a hearing on the petition. On March 14, 1997, the State filed a petition to terminate Melissa's parental rights to Amber. On June 26, 1997, Melissa was released on intensely supervised parole, however, she soon became pregnant again. Melissa filed for visitation with Amber. On July 24, 1997, the court ordered supervised visitation for purposes of Melissa's

psychosocial evaluation and continued the dispositional and termination hearings pending the evaluation results.

After hearings on December 16, 1997, and January 27, 1998, the court terminated Melissa's parental rights by order dated March 4, 1998, under Iowa Code sections 232.116(1)(c)¹ and (f).² Melissa appeals.

Scope of Review. Appellate review of child in need of assistance proceedings is de novo. *In re L.K.S.*, 451 N.W.2d 819 (Iowa 1990). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *In re*

¹ This section reads:

c. The court finds that 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.

² This section reads:

f. The court finds that 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 court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

W.G., 349 N.W.2d 487, 491-92 (Iowa 1989), *cert. denied sub nom., J.G. Tauke*, 469 U.S. 1222 (1985).

Violations of the Voluntary Agreement. Melissa first asserts the State violated the voluntary foster care placement agreement. Specifically, she claims (1) violations of several paragraphs of the agreement, (2) failure to renew the agreement, and (3) failure to return Amber to Melissa at the expiration of the thirty-day agreement. At the expiration of the agreement, Melissa was still incarcerated. The State promptly filed a CINA petition and the court placed Amber in the temporary custody of DHS pending a hearing on the petition. Melissa did not raise any challenge to these actions or the violations she now alleges until more than six months later. De novo review requires us to review "the facts as well as the law and adjudicate rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the course of the trial court's proceedings." *In re Voeltz*, 271 N.W.2d 719, 722 (Iowa 1978); *In re McDonald*, 201 N.W.2d 447, 453 (Iowa); *see also Long v. Long*, 255 N.W.2d 140, 143 (Iowa). Melissa has failed to preserve error concerning the voluntary placement agreement and we do not address her claims. In addition, the temporary order placing custody of Amber with DHS moots any claim concerning custody under the previous voluntary agreement. "An issue is moot if it no longer presents a justiciable controversy because it is has become academic or nonexistent." *In re D.C.V.*, 569 N.W.2d 489, 494 (Iowa 1997) (quoting *In re Meek*, 236 N.W.2d 284, 288 (Iowa 1975)).

Violations of Due Process. Melissa asserts her due process rights were violated by the failure of the juvenile court (1) to order reunification with Amber and (2) not adjudicating Amber in need of assistance until after the petition for termination was filed.³ We do not address claims, even constitutional claims, for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). Melissa did not assert her due process claim in the juvenile court. We do not address it on appeal.

Evidentiary Claims. Melissa asserts termination of her parental rights is not in Amber's best interest and is unsupported by clear and convincing evidence. Our primary concern in termination proceedings is the best interest of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. The court considers what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Under

³ We note the adjudicatory hearing was not held until December 16, 1997. Iowa Rule of Juvenile Procedure 4.5 sets a sixty-day period for such hearing after the petition is filed, unless good cause is shown. Both the State and the mother requested continuances. Other motions and proceedings caused the adjudicatory hearing to be delayed in Melissa's and Amber's interest. We find good cause for the delay.

the statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *Dameron*, 306 N.W.2d at 745.

Melissa has received services and assistance from the State for over a decade. During this period, she has failed to demonstrate insight into her own problems or the needs of her children. Her parental rights to all prior children have been terminated. Despite the offer and receipt of services, Melissa has not demonstrated the ability to provide adequate care and supervision for her children. Although she participated in classes and services while incarcerated, her continued violations of the law, her inability to maintain suitable employment, and the ongoing threat of renewed incarceration clearly and convincingly demonstrate termination of her parental rights to Amber is both appropriate under Iowa Code sections 232.116(1)(c) and (f) and is in Amber's best interest. "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). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d at 495. To keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995). The record reveals Amber's foster family adopted one sibling and desires to adopt her. Amber's best interest is

served by giving her the opportunity for permanency and stability in a loving, adoptive family. *See In re T.C.*, 492 N.W.2d 425, 429 (Iowa 1992).

AFFIRMED.