

FILED

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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF L.M.C.)
and D.J.C., Minor Children.)
S.D.C., Natural Mother,)
Appellant.)

8-454
88-607

Appeal from the Iowa District Court for Scott County
(No. J(T) 4815-0188), John G. Mullen, District Associate
Judge.

The mother of two children appeals from the termination
of her parental rights. **REVERSED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly,
Davenport, for appellant mother.

Thomas J. Miller, Attorney General; Katherine S.
Miller-Todd, Assistant Attorney General; and Henry C.
Filseth, Assistant Scott County Attorney, for appellee
State.

Thomas J. Yeggy, Davenport, guardian ad litem for the
children.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

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The mother, S.C., appeals the termination of her parental rights. She contends the State failed to prove that there is clear and convincing evidence that the children cannot be returned to her custody. We reverse.

Appellate review of the juvenile court's proceeding is de novo. In re Interests of W.G., 349 N.W.2d 487, 491 (Iowa 1984). We give weight to the court's findings of fact, but we are not bound by those determinations. Id. at 491-92.

S.C. was fourteen years old when she gave birth to L.C. D.C. was born two years later. Both fathers have abandoned these two children. L.C. was born on July 26, 1982. D.C. was born on March 10, 1984.

The juvenile court terminated the mother's parental rights to her two children, L.C. and D.C., pursuant to Iowa Code section 232.116(3) (1987 Supp.) Specifically, the juvenile court found that the mother's parental capability had not changed significantly and that the children would suffer abuse and harm if they were returned to her custody. The court failed to state to what type of harm or abuse the children would be exposed. The court stated the children were initially removed from the home because the mother, on several occasions, had hired a baby-sitter who left the children unattended. However, the record reflects that the State only proved one such occurrence. Upon

cross-examination, Vicky Pappas, social worker for the Department of Human Services, stated that she had no personal knowledge of previous difficulties with this particular baby-sitter, but that she had discussed this matter with an investigating police officer who told her he had spoken with unnamed neighbors of S.C. who had told him that this particular baby-sitter had left the children unattended on other occasions. This testimony was properly objected to as hearsay.

The district court stated that S.C. had failed to cooperate with the Department of Human Services in working towards reunification of her family. However, the record is not all that clear in this regard. Between the initial report made to the Department of Human Services on November 20, 1985, and March 7, 1986, the date upon which the children were removed from the home, S.C. had not cooperated with the department and had only attended two scheduled meetings. However, from March 7, 1986, to April 21, 1986, Mr. Robert Williams testified that S.C. had attended eight out of ten scheduled meetings. Mrs. Pullman's testimony regarding S.C.'s attendance is less clear for that period between April 21 and July 5, 1986. She states that S.C. attended anywhere from two to ten scheduled meetings with the department and her children. After S.C.'s incarceration on July 5, 1986, the department initially, and then the court, denied her visitation with

her children because it was determined that it would not be³⁵ good for the children to visit their mother in prison. Despite this obstacle, the record reflects S.C. made numerous phone calls to the department concerning her children, wrote letters, and sent gifts.

Prior to her incarceration at Mitchellville, S.C. had only received an eighth-grade education. By the time she was seventeen years old, she had numerous difficulties with the juvenile authorities and had given birth to two children. Her psychiatric evaluation at that time raised concerns about her intellectual and emotional capabilities as pertains to her parenting skills. The psychiatrist recommended that S.C. be exposed to as much education as possible. Additionally, the record reflects that S.C. had herself left the children unattended on one occasion in 1984. However, since the children were removed from her home in 1986, she, now twenty years old, has steadily taken on more responsibility for the care of her children. At the termination hearing, it was established that she was within one course of being awarded her G.E.D.; that she had taken parenting classes; and that she had successfully completed classes in dietary and building maintenance to prepare herself for future employment.

Members of the Department of Human Services and Bethany Rome testified that S.C.'s failure to adhere to rules during her incarceration, which led to longer prison time,

is a manifestation of her parenting capabilities. ³⁸ They stated that if S.C. had any concern for her children she would have followed prison rules more closely to ensure early release. We find this association too tenuous. S.C.'s rule infractions were mostly minor.

S.C. testified that she was sixteen years old when she gave birth to her second child, that her actions were too immature, and that she has no one to blame for her present problems but herself. The department failed to prove to what type of harm the children would be exposed if they were returned to the home. While it is true that a parent's past performance may be indicative of the type of care they will provide to the child in the future (In the Interests of Dameron, 306 N.W.2d 743, 745 (Iowa 1981)), that history should reflect the consistent fact that there has been no change in the parent's nurturing skills. In the case presently before us, we have no evidence regarding S.C.'s parenting skills over the last two years, other than she has completed all required educational course work and has maintained contact with authorities concerning her children. Additionally, departmental personnel testified that they could not make a present assessment of S.C.'s parenting skills because they had not met with her recently.

In cases such as these, the child's best interests is the determining factor. In the Interest of Dameron, 306

N.W.2d 743, 745 (Iowa 1981). We cannot determine whether the best interests of the children will be served in this case by reunification of the family or termination of parental rights without more recent evidence of the mother's parenting capabilities and an assessment of the relationship or lack thereof between S.C. and her two children.

We find that there does not exist clear and convincing evidence that the children cannot be returned to their mother's care. The evidence does not reveal any present or future harm to which the children would be exposed pursuant to Iowa Code sections 232.116(e), 232.102(7), and 232.2 (1987 Supp.).

REVERSED.