FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-645 / 92-1179

IN THE INTEREST OF H.R.T. and J.E.W., Minor Children,

STATE OF IOWA,

Appellant/Cross-Appellee,

J.T.T., Mother,

Appellee/Cross-Appellant.

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

The State appeals the juvenile court's refusal to terminate the parental rights of the mother, J.T.T., as to her natural children. **AFFIRMED.**

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Karen Romano, Assistant County Attorney, for appellant.

Artis Reis of the Reis & Bowman Law Office, Des Moines, for appellee.

Michelle Chenoweth of the Youth Law Center, Des Moines, guardian ad litem for minor children.

Heard by Donielson, P.J., and Hayden, J., and Perkins, S.J.*

*Senior Judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

J.T.T. is the natural mother of a son, J.W. (born February 7, 1988) and a daughter, H.T. (born July 5, 1990). In November of 1991, J.T.T. became romantically involved with D.R. From December of 1991 until February of 1992, D.R., J.T.T., the two children and two female roommates all lived together.

In December 1991, J.T.T. reported to the Department of Human Services (DHS) that she suspected J.W. had been sexually abused by one of her female roommates. DHS determined this was a founded report. J.T.T. initially sought counseling services for J.W., but she did not follow up on them.

On February 16, 1992, D.R., J.T.T. and the children moved into the home of some friends of J.T.T. Eventually, the friends became suspicious that D.R. was physically abusing J.W. J.T.T. did not intervene, but left the discipline of J.W. to D.R.

On March 5, 1992, D.R. seriously beat J.W., causing life-threatening injuries. J.W. was taken to the hospital. J.W. has suffered permanent brain damage as a result of his injuries. Medical evidence showed J.W. had a broken arm and bruises which predated the March 5 injuries. There was no evidence H.T. was the victim of any abuse.

J.W. and H.T. were immediately removed from the mother's custody. The State charged J.T.T. and D.R. with child endangerment and they were ordered to have no contact with J.W. or H.T. The State also filed CINA petitions regarding both children. Subsequently, on March 16, 1992, the State filed a petition to terminate the parental rights of J.T.T. as to both children.

The CINA and termination petitions came on for hearing on the same day. The State sought immediate termination of J.T.T.'s parental rights pursuant to Iowa Code section 232.116(1)(h) (1991). On July 2, 1992, the juvenile court determined both children to be children in need of assistance. However, the court determined that J.T.T.'s parental rights should not be terminated. The court concluded that section 232.116(1)(h) required that services be offered and received by the parent before their parental rights could be terminated. The State admitted that services were not offered or received by J.T.T.

H.T. was placed in the custody of her father, S.T., the estranged husband of J.T.T. J.W. was placed with his maternal aunt and her husband. Both children remain under the supervision of DHS.

The State appeals and J.T.T. cross-appeals.

Our review in termination cases is de novo, but we give weight to the findings of the juvenile court--especially regarding the credibility of witnesses. In re A.R.S., 480

N.W.2d 888, 890 (Iowa 1992). Our overriding concern in parent-child termination cases is the best interests of the child. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992).

The State contends the juvenile court erred in its interpretation and application of section 232.116(1)(h). The State claims that subsection (1)(h) was intended to allow for immediate termination in those situations where abuse or neglect is so severe that "despite the receipt of services" the children would still be in imminent danger.

Section 232.116(1)(h) provides:

> h. The court finds that both of the following have occurred:
>
> (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
>
> (2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes imminent danger to the child. [Emphasis added.]

We note there are no previous cases construing this subsection. When construing statutes, our ultimate goal is to ascertain and give effect to the intention of the legislature. In re R.L.D., 456 N.W.2d 919, 920 (Iowa 1990). We consider the language of the statute and the objects sought to be accomplished. Id. The court searches for legislative intent as shown by what the legislature said, rather than what it should or might have said. Peterson v. Ford Motor Credit Co., 448 N.W.2d 316, 318 (Iowa 1989).

We agree with the juvenile court's interpretation of section 232.116(1)(h):

> The Court concludes that the phrase "despite the receipt of services" in the context of subsection (h) means that services were offered and received by the parent, and despite the receipt of those services the abuse or neglect occurred. The Court cannot infer from the language nor from a broader reading of the entire subsection that the legislative intent was to permit termination of parental rights under this subsection where there had not been any services provided to the family prior to the abuse occurring. This interpretation results in a conclusion that the State has failed to establish the grounds for termination in that services had not been provided to [J.T.T.] prior to the incidents of abuse in early March and late February, 1992.

We have previously noted that the law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills. In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). In view of this required patience, certain steps are prescribed when termination of the parent-child relationship is undertaken under chapter 232. Id. Under subsection 232.116(1)(h), this means that services must be offered and received by the parent before there can be a termination of parental rights.

We affirm the juvenile court's conclusion that the State failed to establish the grounds for termination of J.T.T.'s parental rights pursuant to section 232.116(1)(h) (1991).

In her cross-appeal, J.T.T. contends the juvenile court erred in finding H.T. was a child in need of assistance.

She points out there was no evidence H.T. was abused or harmed in any way.

The State alleged H.T. was a child in need of assistance under Iowa Code section 232.2(6)(b) and (c)(2) (1991). These sections provide a child in need of assistance means a child:

> b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.
>
> c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:
>
> . . .
>
> (2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

The procedures under chapter 232 are preventative as well as remedial, and these procedures are designed to prevent probable harm to a child before harm actually occurs. In re M.M., 483 N.W.2d 812, 815 (Iowa 1992). In attempting to avoid harm to a child, a court may make reasonable predictions about a parent's future performance by looking at her past. In re A.R.S., 480 N.W.2d 888, 890 (Iowa 1992).

We find clear and convincing evidence H.T. is a child in need of assistance. H.T.'s brother, J.W., suffered permanent and life-threatening injuries while in the custody of J.T.T. J.T.T. did nothing to protect the child from harm. The evidence shows H.T. would be imminently

likely to suffer harm if returned to the custody of her mother.

We affirm the district court on all issues.

AFFIRMED.