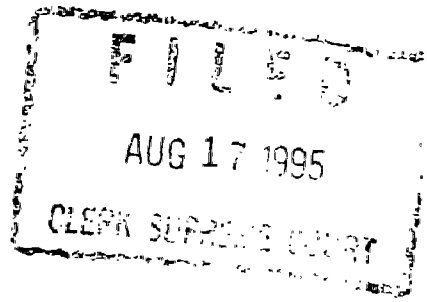


IN THE COURT OF APPEALS OF IOWA

No. 5-413 / 95-438

IN THE INTEREST OF
J.A.J., A Minor Child,

L.K., Mother,
Appellant,

J.J.J., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Associate Juvenile Court Judge.

Mother and father appeal the district court's order terminating their parental rights over their minor child. **AFFIRMED.**

Barbara H. Liesveld, Cedar Rapids, for mother-appellant.

Christine L. Crilley, Cedar Rapids, for father-appellant.

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

Michael Eganhouse, Cedar Rapids, guardian ad litem for minor child.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

HUITINK, J.

J.J.J. and L.K., father and mother, appeal the juvenile court's decision terminating their parental rights concerning their child, J.A.J. We affirm.

J.A.J. was born prematurely weighing approximately three pounds. She was released from the hospital to her mother, L.K., on December 13, 1993. Because of her low birth weight and L.K.'s mild retardation, service referrals were made to the Visiting Nurses Association, Parent Alliance, and the Association of Retarded Citizens. J.A.J. was readmitted within a week of her release because of concerns about L.K.'s ability to care for her.

Physicians' concerns about J.A.J.'s care led to intervention by the department of human services. On December 21, 1993, L.K. signed a voluntary agreement with the department resulting in J.A.J.'s foster placement. A petition alleging J.A.J. was a child in need of assistance was filed in January 1994. On February 8 the State, J.A.J.'s parents, and her guardian ad litem stipulated J.A.J. was a child in need of assistance because she had suffered or was imminently likely to suffer harmful effects as a result of her parents' failure to exercise a reasonable degree of care in her supervision. *See* Iowa Code § 232.2(6)(c)(2) (1993). The dispositional order entered in April 1994 provided for continued foster placement and weekly supervised visitation. These provisions were an extension of services and supervision provided by Lutheran Social Services since J.A.J.'s placement in December 1993.

Because of L.K.'s limited ability and level of understanding, parent skill training was arranged through the Association of Retarded Citizens. L.K. was not receptive to these services, stating she did not want her child returned to her and was not interested in improving her parenting skills. L.K. and J.J.J. attended the first training session, but both refused to attend further training sessions sponsored by A.R.C. Visitation arrangements were more productive with both parents consistently maintaining a visitation schedule.

After six months of providing services and supervised visitation the department revised J.A.J.'s permanency plan from reunification to termination. This revision resulted from the department's assessment of L.K.'s parenting deficiencies and her inability to learn the skills required to care for J.A.J.

The department reached a similar decision regarding J.J.J. Although he was attributed with the ability to learn the necessary parenting skills, the department remained concerned about his history of criminal activity, substance abuse, and unavailability due to his incarceration.

After the termination hearing, the juvenile court found J.A.J. could not be returned to J.J.J.'s custody due to his confinement following his conviction of operating while intoxication third offense. The juvenile court also found J.J.J.'s "history of criminal activity and incarceration especially as related to substance abuse and domestic abuse, makes it abundantly clear the child cannot be returned to her father's care."

In reaching the same conclusion regarding L.K. the juvenile court concluded "the evidence is overwhelming that, due to the mother's mild retardation, she can never reach a point where she would have the ability to care for a child on her own." The juvenile court also noted that "the services attempted by [DHS] and designated service providers were adequate to alleviate the need for termination but those services were doomed to failure." L.K.'s and J.J.J.'s parental rights were accordingly terminated.

Both parents appeal. They argue the district court erred in finding the State had established that J.A.J. could not be returned to their custody. They also contend that the department has not made reasonable efforts to reunite them with their child.

Appellate review of termination orders 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.

Our primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(8)(5); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In deciding what is best for the child we look to the child's long-range as well as immediate interests. We also look to the past performance of the parents because it is an indication of the quality of care the parent is capable of providing in the future. *In re A.M.S.*, 419 N.W.2d 723, 726 (Iowa 1988).

The juvenile court based its termination decision on Iowa Code section 232.116(1)(9). This statute authorizes termination when the State establishes all of the following by clear and convincing evidence: (1) The child is three years of age or younger; (2) The child has been adjudicated a child in need of assistance; (3) Custody of the child has been transferred from the child's parents for placement for at least six of the last twelve months or for the last six consecutive months and any trial period at home has been less than thirty days; and (4) There is clear and convincing evidence that the child cannot be returned to the custody of a parent as provided in section 232.102 at the present time. Section 232.102 requires the State to prove the child cannot be returned to a parental home because circumstances then existing would warrant the child's adjudication as a child in need of assistance. This appeal concerns only element four since the others are not disputed.

After our de novo review of the record, we reach the same conclusion as the juvenile court concerning the father 's parental rights. Although J.J.J. has demonstrated an interest in parenting this child, we find his commitment is short term. He has a substantial criminal record involving repeated incidents of abusive behavior and alcohol abuse. Moreover, the department's efforts to provide J.J.J. with necessary services have been frustrated by his ambivalence to receipt of these services and his unavailability due to ongoing legal problems and substance abuse.

Although we sympathize with L.K.'s circumstances, the record presents overwhelming evidence necessitating termination. The State has acknowledged that L.K.'s retardation alone does not provide sufficient justification for termination of her parental rights. We are convinced the department has made reasonable efforts to accommodate L.K.'s retardation. It is clear, however, that despite the best efforts of the professional service providers, L.K. lacks the ability to care for her child. She has been unable to learn the most elementary parenting skills necessary to meet J.A.J.'s needs. L.K., for example, is unable to anticipate J.A.J.'s future needs for a feeding schedule, diapers, and medication. There is also evidence that L.K. would need someone in her home twenty-four hours a day to assure J.A.J.'s safety.

We determine J.A.J. cannot be safely returned to the custody of either parent. We also find the department made reasonable efforts to reunite this family by offering them parent skill training and supervision. The recommendation to terminate resulted only after these efforts failed. The decision of the juvenile court is therefore affirmed.

AFFIRMED.