

IN THE COURT OF APPEALS OF IOWA

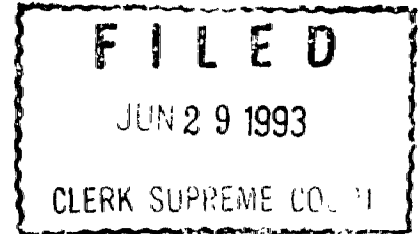
No. 3-210 / 92-1180

IN THE INTEREST OF M.W., M.W. and M.W., Minor Children,

M.W., Mother,
Appellant,

P.G., Father of M.W. and M.W.,
Appellant,

M.W., Grandmother,
Appellant.



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Appeal from the Iowa District Court for Polk County,
James W. Brown, Judge.

The mother and one of the fathers appeal from the
termination of their parental rights. **AFFIRMED.**

William A. Price, Des Moines, for appellant mother.

June Lorraine Hyatt, Des Moines, for appellant father.

Artis Reis, and Donna Schauer and Terry L. Raun,
student legal interns of Senior Citizens Legal Services,
Des Moines, for appellant grandmother.

Cory L. McClure of Youth Law Center, Des Moines,
guardian ad litem for the children.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Ray Blase, Assistant County Attorney, for appellee State.

Heard by Oxberger, C.J., and Donielson, J., and McCartney, S.J.*

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

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OXBERGER, C.J.

M.W., the mother, has three children: Me.W., born September 13, 1984; Ma.W., born May 10, 1987; and Mi.W., born November 28, 1989. P.G. is the natural father of the younger two children.

The family came to the attention of the juvenile court in August 1990. The police were called to the mother's house when neighbors saw the children playing outside naked and the mother throwing food out the door. The mother had been hearing voices. The mother said the food had been poisoned by the Department of Human Services. The police found no food in the house. P.G. said the mother had denied the children food for a few days, but he had secretly given them hamburgers and fries while she slept.

P.G. suffers from paranoid schizophrenia. He has been a habitual drug and alcohol abuser. At a psychological assessment, the mother reported P.G. currently used Demerol, crystal, and speed. He has served time in prison. In an effort to "reduce his libido," he once used a butcher knife to cut off his left testicle. There is a founded report that P.G. physically abused Me.W.

The children have been in foster care since August 1990. Initially, DHS hoped she might be able to care for her children with adequate monitoring of her psychiatric status and compliance with her medication.

An adjudicatory hearing was held on November 14, 1990. The children were determined to be in need of assistance

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pursuant to Iowa Code sections 232.2(6)(c)(2) and 6(n) (1989). Visitation was ordered for the mother and children. P.G. was ordered to have no contact with the children except as recommended by the children's therapist.

In March and April 1992, a hearing was held on termination of parental rights. The court found the experts who had been in regular contact with the mother and P.G. unanimously recommended termination of parental rights for both parents. The maternal grandmother and the mother's sister agreed the children could not be returned to either parent.

The district court terminated the parental rights of the natural father of the oldest child pursuant to Iowa Code section 232.116(1)(b) (1991) (abandonment). The mother's parental rights over both Me.W. and Ma.W. were terminated pursuant to section 232.116(1)(d) (no attempts to maintain contact with CINA transferred out of custody more than six months ago), and section 232.116(1)(h) (a CINA because of neglect and circumstances continue despite receipt of services). P.G.'s rights over Ma.W. were terminated pursuant to section 232.116(1)(h). Both the mother's and P.G.'s rights over Mi.W. were terminated pursuant to section 232.116(1)(g) (a CINA less than three years old and in foster care the requisite time).

The children's maternal grandmother intervened prior to termination. She had been granted visitation while the children were in foster care. The court ordered visitation

could continue until adoption at which time visitation rights would automatically terminate.

The mother, P.G., and maternal grandmother appeal.

I. 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 (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.

II. Termination of Mother's Parental Rights

On appeal, the mother argues the State did not provide adequate services to assist her. She also contends her rights were terminated based solely on her mental disability.

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).

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Patience on behalf of the parent can quickly translate into intolerable hardship for the children. In re R.J., 436 N.W.2d 630, 636 (Iowa 1989). Children should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). "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).

While mental illness, by itself, is not a sufficient reason to terminate a parent's rights, it is a proper factor to consider in determining whether a child is neglected to the point where his or her interest and welfare require termination. In re J.W.D., 456 N.W.2d 214, 218 (Iowa 1990). See also Iowa Code § 232.116(2)(a) (1991).

We find ample evidence of the State's attempts to provide mother with services. She initially refused hospitalization and had to be committed to care by her family. She was discharged from the hospital on September 21, 1990. She was diagnosed with a bipolar affective disorder and was prescribed lithium, a highly successful medication for the treatment of her condition. Although visitation had been permitted and ordered to begin in November, the mother stopped seeing her psychiatrist and discontinued her medication in November. In addition, although a no-contact order had been issued against P.G., the mother allowed him to attend unsupervised visits. On

supervised visits; mother barely interacted with the children and was unable to select age-appropriate toys and activities.

In January 1991, the mother participated in a psychiatric evaluation. The resulting report indicated mother was unable to care for herself, had very poor comprehension and would require maximum therapeutic services in order to be a full-time parent. In February 1991, a Court Appointed Special Advocate (CASA) issued a report based on evaluation and meetings with mother. The report indicated mother was agitated and difficult to follow. Mother ceased visiting the children despite numerous contacts from DHS. DHS offered counseling, homemaker services, and parenting classes. Mother refused services and failed to attend required sessions. Based on these facts, we conclude the juvenile court was correct in determining the State offered mother ample services in an effort to reunite the family. We find no evidence that the juvenile court terminated her rights solely based on her mental disability; rather, her inability to adequately care for her children was the key factor presented to the court. We affirm the juvenile court's decision terminating mother's parental rights.

IV. Termination of P.G.'s Parental Rights

On appeal, P.G. argues: (1) the State failed to meet its burden of proof; (2) the court based its ruling on his

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ability to care for children prior to his treatment for mental illness, thereby discriminating against him in violation of the Americans with Disabilities Act; and (3) he did not receive adequate services prior to termination. P.G. does not seek custody, but believes custody should be with the mother and his rights should not be terminated.

We find the State adequately proved, by clear and convincing evidence, P.G.'s parental rights should be terminated. Both children reported being hit by P.G. P.G. has admitted to illegal drug use, violent thoughts, and a desire to harm people. He has maintained minimal interest in the children since their removal. Both children report being afraid of P.G. Neighbors and the mother reported P.G. had been physically abusive toward the children. One child reported mother and P.G. had sex in the presence of the children. Based on these facts, we affirm the juvenile court's finding, by clear and convincing evidence, P.G.'s parental rights should be terminated.

We also find ample evidence of services offered to P.G., most of which he refused. DHS attempted to contact P.G. on numerous occasions. P.G. moved, was incarcerated, and failed to notify DHS of his whereabouts. P.G. refused to attend staffings and court hearings. His therapist terminated services because P.G. failed to keep appointments. We affirm the juvenile court.

Finally, P.G. argues the termination was in violation of his rights under the Americans with Disabilities Act

(ADA). Assuming arguendo, the applicability of the Act to this case, we find no support for this claim in the record. P.G.'s parental rights were terminated because of his repeated failure to adequately care for the children and his repeated conduct endangering their safety. We affirm the juvenile court.

V. Termination of Grandmother's Visitation Rights

The grandmother argues that the termination of her visitation is not mandated by the Code of Iowa. She requests ongoing visitation with her grandchildren.

The facts of this case do not require us to reach the legal issues surrounding termination of grandparent visitation. In this case, the facts simply do not support ongoing visitation between grandmother and grandchildren. At trial, the children's therapist testified it was not in the children's best interest to continue to see their grandmother. She indicated the grandmother's visits had been sporadic and the children expressed no desire to see her. She also testified these children would be confused and would have a difficult time achieving permanency if visitation continued. We find this to be sufficient evidence from which to terminate grandmother's visitation rights. We affirm the juvenile court.

AFFIRMED.