FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.S., J.H., and B.S.H., Children,	)	Filed September 25, 1986
J.H. and S.H., Parents,	)	6-287 85-1214
Appellants.	)	

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Appeal from the Iowa (Juvenile) District Court for Jefferson County (J #1072) - Max H. Ruschmeyer, District Associate Judge.

The parents of three children appeal from the juvenile court order terminating their parental rights. **AFFIRMED.**

Michael R. Brown, Fairfield, Iowa, for the appellants (parents).

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

The children involved here are two boys born in 1975 and 1980 and a girl born in 1982. All three children have the same mother, and the younger two children have the same father. The mother and the father of the younger two children were married in 1980.

The family has had a lengthy involvement with the department of social services. The oldest child was first adjudicated to be a child in need of assistance in 1979. In 1982 all three children were adjudicated to be children in need of assistance and were placed in foster care. In early 1983 the children were returned to the parents' home; however, in August 1983 all three children were again placed in foster care, where they have remained.

The evidence indicated that the children suffered in the parents' custody from neglect, inadequate nourishment, inadequate shelter, and exposure to bitterly cold weather. The evidence also indicated that both parents had physically abused the children, that the father had often beaten the mother, that both parents have criminal records and alcohol problems, and that the parents move frequently, cannot hold jobs, and routinely refuse to cooperate with social workers.

In 1984 the State filed a petition to terminate the parental rights of both parents with respect to all three children. After a hearing, a juvenile referee terminated the parental rights of both parents on the ground stated in Iowa Code section 232.116(5) (1983). That statute permits termination if the court finds that:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
>
> b. The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and

> c. There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The referee's termination order was confirmed by a district associate judge.

The parents have appealed from the termination of their parental rights. They contend the evidence did not support the juvenile court's conclusion that the children could not be returned to their custody.

After this appeal was made ready for submission, the State filed a motion for "expedited processing" of the appeal. Also, a joint waiver of oral argument has been received by this court.

Our review in this situation is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." In re Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 470 U.S. ___, 105 S. Ct. 1212, 84 L.Ed.2d 353 (1985).

In considering termination proceedings, our decision is controlled by the best interests of the children. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). There is a presumption that the best interests of the children will be served by continued parental supervision, but this presumption is in no way conclusive. In re Interest of T.D.C., 3360 N.W.2d 738, 740 (Iowa 1983). It must also be remembered that the State, as parens patriae, has a duty to assure that every child in this state receives proper care and treatment. Dameron, 306 N.W.2d at 745. The State must intercede when the natural parents neglect their duties. Id.

The natural parents contend the evidence did not support the juvenile court's decision to terminate their parental rights. The State, in order to justify termination of parental rights, must show clear and convincing evidence that

the children cannot be returned to the parents as provided in Iowa Code section 232 102 (1983). Section 232.102(3)(a)(b) provides:

> 3. Whenever possible the court should permit the child to remain at home with his or her parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:
>
> a. The child cannot be protected from physical abuse without transfer of custody; or
>
> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The juvenile court found the children, if returned to the parental residence, could not be protected from:

a) Neglect of the children's basic needs.

b) Failure of the parents to provide reasonable supervision for the children, and exposing them to danger consequentially.

c) Emotional abuse as a consequence of marital conflict.

d) Emotional abuse as a consequence of the parents' documented inattention to the children for a substantial period of time.

After reviewing all pertinent pleadings, the parties' briefs, and the juvenile court's transcript, we conclude the State presented clear and convincing evidence these children could not be returned home. In reaching this conclusion we recognize that in considering the future prospects for the children, if returned to the parents, we may consider evidence of the parents' past performance, for that performance may be indicative of the quality of future care. Dameron, 306 N W.2d at 745; In Interest of M.H., 367 N.W.2d 275, 278 (Iowa Ct. App. 1985)

The parents also assert since they complied with the "six month service agreement" signed on February 7, 1984, the children should be returned to them.

The agreement's purpose was to set forth nine particulars which would establish the initial steps in working to have the parties' children returned to them. We find this agreement in no way bound the Department of Human Services to return the children upon compliance. Rather, it was an "initial step" in the parents' journey to the possible return of their children. We find the parents failed to comply with all nine factors; factor two required that the parents find sufficient employment with income adequate to support the family. No conclusive evidence was presented to affirmatively find such an income level had been attained.

As noted earlier, the children have already been returned to the parental home (in 1982) only to be removed (in August 1983). This fact, along with the general moral depravity of the parents, leads us to conclude that the children should remain in foster care. We note, in this regard, that the children have all flourished while with their foster family and conclude that it is in their best interests to continue under such care.

AFFIRMED.