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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-306 / 89-242

IN THE INTEREST OF T.W.W., Jr., M.K.W., and C.J.W.,
Minor Children

C.O., Mother,

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Appellant.

Appeal from the Iowa District Court for Pottawattamie County (Juv. 01187), Gordon Abel, District Associate Judge.

Mother appeals order terminating her parental rights. **REVERSED AND REMANDED.**

John W. Kocourek, Council Bluffs, for the appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Martha Heinicke, Assistant County Attorney, for the appellee State.

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

SACKETT, J.

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On October 5, 1989, we remanded this termination of parental rights case for the sole purpose of having the trial court take additional evidence as to the mother's current situation and modify or affirm its prior decision to terminate her parental rights. See In re T.W.W., Jr., M.K.W., & C.J.W., 449 N.W.2d 103 (Iowa App. 1989). The trial court took the additional evidence and affirmed its prior order terminating parental rights. The case has now been returned to us. We review the evidence on remand.

The children, born in 1980, 1981, and 1982, have spent a major portion of their childhood years in various foster homes. Their mother, who was sixteen years old at the time of the birth of the oldest child, lacked the maturity and structure necessary to be a good parent. She had minimal education. She subsisted with her children at the poverty level and was involved with a series of men who were abusive to her and her children. She failed quite miserably as a parent. We recognize that the fact she failed may be in part because of her lack of maturity.

The children have been in foster care continually for the past four years. The children currently have a series of problems, including a propensity to start fires. They do not get along well with each other, and at least two, through social workers, have expressed a desire not to be reunited with their mother. The mother does not contend

she was a good parent, and our findings clearly are she was not an adequate parent.

We can look at past conduct as it may predict fugure conduct. But the important issue is whether there is clear and convincing evidence the children cannot be returned to their mother. See In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988); In re K.L.C., 372 N.W.2d 223, 228 (Iowa 1985). Clearly, the mother's living circumstances have changed drastically since the time her children were put in foster care. Her current husband, whom she met at an Alcoholics Anonymous meeting and whom she married in December 1988 after extensive premarital counseling, is forty-two years of age and a Chief Hospital Corpsman in the United States Navy, a position he has held for nearly twenty-four years. He has stability, an excellent work record, and a desire and willingness to take custody of and ultimately adopt his wife's three children. He has never met the children. His job provides an income of over $40,000, he has very adequate housing, and, if the children are in their mother's custody, they will qualify for the smorgasbord of benefits available to dependents of those in the armed forces, including medical and counseling services. He is being transferred to the State of Washington where his duties will include those of chief medical officer for two six-week periods annually. At other times he will be home with his wife.

Admittedly, he has contributed substantially to the mother's stability. The mother is now twenty-six years of age. She claims to have had problems with substance abuse, which she contends she has corrected. She also was diagnosed in December 1988 as having Graves' disease, which was treated by surgery in about September 1989. She is also currently on medication. Graves' disease apparently causes hyperactivity and instability in some persons. How long before the surgery she had this problem and what effect it may have had on her parenting are not clearly established by medical evidence. She contended the disease had an effect on her parenting ability.

The mother, just prior to the hearing on remand, was examined by a licensed psychologist. The psychologist found no signs of psychotic behavior. He determined she had a troubled childhood and resists disclosing her emotional distress to others, and is a very emotional person. He found she does not show an active mental disorder, but does have personality disorders. She finds it difficult to trust others and has a tendency to disassociate herself from life's unpleasant things. He also determined her responses indicate she is more at peace with herself than she has ever been. He found her emotionally stable, but was unable to assess, through interviews and testing, her fitness as a parent. He recommended if she were to receive the children, she might

benefit from a highly structured parenting program and in-home supervision. He indicated the mother might have a difficult time cooperating with these strategies and might perceive them as intrusive.

The trial court addressed the children's problems and found the mother's reluctance to accept help would mean the children could not be returned to her care. It determined that although the mother's current husband is stable and responsible, she would have the parenting responsibilities while he was at sea.

The return of these children to their mother cannot happen without difficulty. The children continue to have serious problems. If not returned to their mother, there is no guarantee these children will be adopted. If they are adopted, they most likely will go to different adoptive homes. They will have problems in an adoptive home. They currently have problems in the therapeutic foster home. They will have problems if they are returned to their mother's home. Foster care has not solved these children's problems. Termination will not solve these children's problems. Adoption, if these children are adopted, will not solve these children's problems. Returning these children to their mother's care will not solve these children's problems.

We do not ask whether these children will have problems. Rather, the question is, is there clear and

convincing evidence they will suffer harm if returned to their mother? The mother was an inadequate parent during a large part of the children's early years. She became a mother at sixteen years of age and did not have the maturity that the birth of three children in three years required of her. Today she is determined to be reasonably stable, and she has a stable and supportive spouse. They have very adequate physical facilities and income for the children. Medical and counseling services will be readily available to them.

We recognize the mother has a tendency to reject outside help, although her testimony reflects she knows she will need assistance integrating the children into her home. The children come with a series of special needs. Two of the children have manifested they do not want to be in their mother's care or at least not in the care of the mother they knew. The children do not work well together. The children are nearing their teen years when all children have some problems.

While the road to integrate these three children into the mother's family is not an easy one, we cannot determine, under this record, there is clear and convincing evidence the children will suffer harm if returned. The children should remain children in need of assistance to assure that assistance and supervision follow their return. The mother needs to realize that with the return

of her children will come a series of substantial demands on her life, frequently without reward or thanks. She must also recognize the children may need outside assistance. The primary purpose of a child in need of assistance proceeding is to preserve families. This mother has made substantial progress and has an adequate home for the children.

The order terminating parental rights is reversed.

REVERSED AND REMANDED.