

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 31 1988

CLERK SUPREME COURT

IN THE INTEREST OF R.R.K.,
A Child,

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Filed May 31, 1988

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M.K., Natural Mother,

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8-106
87-1110

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Appellant.

Appeal from the Iowa District Court for Polk County (No. J. 6846-14),
Vincent Hanrahan, Judge.

The mother of a child appeals from the termination of her parental rights.

AFFIRMED.

Stephen Paragamian, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant
Attorney General; and Rebecca A. Belcher, Assistant Polk County Attorney,
for the appellee State.

George Arvidson, Des Moines, guardian ad litem, for the child.

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

HAYDEN, J.

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M.K., the mother of R.R.K., a two-year-old boy, appeals the ruling of the juvenile court terminating her parental rights pursuant to Iowa Code section 232.116(5). She asserts the State failed to show by clear and convincing evidence R.R.K. cannot be returned to her custody. She contends the court erroneously relied too heavily on her alleged failure to comply with her parenting contract with the Department of Human Services (DHS). We affirm.

R.R.K. was born in November 1985. On December 10, 1985, he was removed from M.K.'s custody with her consent after she took R.R.K. to the hospital and indicated she had hit him twice in the stomach and once on the chin. M.K. stated she was afraid she could not control her temper and she did not believe she was able to care for R.R.K. On January 6, 1986, R.R.K. was adjudicated to be a child in need of assistance and was kept in foster care. Shortly thereafter the DHS drafted a parenting contract and submitted it to M.K. for her signature. M.K. refused to sign the contract because she thought it placed too much responsibility on her. Ultimately M.K. signed the contract on August 13, 1986, when the review hearing was held.

On February 16, 1987, the State brought this action to terminate the parent-child relationship between R.R.K. and both M.K. and the natural father. The State alleged the father had abandoned R.R.K. and termination with respect to M.K. was warranted pursuant to Iowa Code section 232.116(5). The juvenile court terminated the parental rights of both parents on these grounds. This appeal by M.K. followed. The natural father has not appealed.

Iowa Code section 232.116(5) provides:

Except as provided in subsection 6, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:

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5. 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.

It is not disputed the requirements of (a) and (b) have been met in this case. M.K. contends the State has not shown by clear and convincing evidence R.R.K. cannot be returned to her custody.

The principles governing our review of the juvenile court are well-settled. Our review is de novo; we review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. In re O'Neal, 303 N.W.2d 414, 422 (Iowa 1981). Central to our determination in this matter are the best interests of R.R.K. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). 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 future care that parent is capable of providing. Id.

Although M.K. contends the juvenile court merely relied on her failure to comply with the parenting contract, the record reflects otherwise. In the seventeen months after R.R.K. was removed from her custody, M.K. only visited him eight or nine times. In fact, from approximately April 1986 to March 1987, M.K. did not visit R.R.K. at all. The importance of this relative lack of visitation certainly transcends the fact it also happened to be a violation of the parenting contract. Similarly, M.K. has failed to follow through on evaluations for psychological counseling and chemical dependence. She has also failed to complete parenting classes on three separate occasions. While these failures were also

contrary to the requirements of the parenting contract, they are more significant for what they indicate about M.K.'s ability and desire to regain custody of R.R.K. On occasion, M.K. has actually expressed this ambivalence about regaining custody by stating a desire to release R.R.K. for adoption. On each occasion, she has later changed her mind.

M.K. contends her emotional problems and mild retardation dictated that the DHS make special efforts to help her. She asserts this was not done. Our review of the record persuades us to the contrary. Help was made available to M.K., but she was unfortunately unable, or unwilling, to take advantage of it. We conclude the juvenile court was correct to terminate M.K.'s parental rights to R.R.K.

AFFIRMED.