IN THE COURT OF APPEALS OF IOWA

No. 5-692 / 95-1066

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[illegible] COURT

IN THE INTEREST OF
T.N., Minor Child.

M.L.B., Father,
Appellant.

T.B., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

Father and mother challenge order terminating their parental rights as to T.N.

AFFIRMED.

R. Douglas Wells of Wells, Bowman & Smith, Davenport, for appellant father.

William J. Bishop of John T. Bribriesco Law Offices, Bettendorf, appellant mother.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, William E. Davis, County Attorney, and Gerda Lane, Assistant County Attorney, for appellee state.

Julian E. Tobey II, Davenport, guardian ad litem for minor child.

Carol Walker, Davenport, attorney for minor child.

Considered by Hayden, P.J., and Cady, and Huitink, JJ.

CADY, J.

Morris and Tracy challenge a district court order terminating their parental rights to Teresa. On our de novo review, we affirm.

Teresa was born on March 9, 1986 to Morris and Tracy. Tracy possesses a low functioning IQ and has difficulty making major decisions by herself. Following Teresa's birth, Tracy refused to allow Morris to see his daughter. Morris became incarcerated from 1988 to January 1992 for second degree theft, during which time he never had any contact with Teresa.

When Teresa was approximately six months old, Tracy moved in with V.S.B. (Scott). Tracy and Scott later married and had two children. Teresa began exhibiting sexualized and violent aggressive behavior which Tracy could not control. Tracy and Scott's began receiving in-home family centered services as early as February 1989, including protective day care and preschool, parenting skill instruction, family therapy, and sporadic mental health counseling for Tracy and Teresa.

During an evaluation of Teresa at the University of Iowa Child Development Clinic, Teresa indicated Scott had sexually abused her. A physical exam confirmed sexual abuse and a no contact order was issued. Further family preservation services were implemented to help Tracy with parenting skills.

In November 1992, Teresa was placed in specialized foster care due to Tracy and Scott's ongoing denial of the sexual abuse, Tracy allowing contact with Teresa

and Scott, Tracy not taking Teresa to school, and Teresa's continuous behavioral problems. Tracy received some family parenting services and was allowed supervised visitation. On December 31, 1992, the juvenile court adjudicated Teresa a child in need of assistance (CINA) as defined in Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2) and 232.2(6)(d) (1993). The DHS managed to locate Morris, who had not had any prior contact with Teresa. Both he and Tracy participated in the CINA proceedings. Morris was married to a woman who is mentally and physically challenged. The couple also have two children who have been adjudicated CINA. Following Teresa's adjudication, her therapist began initiating contact between Teresa and Morris through photographs and letters.

Teresa continued to experience behavioral problems while in foster care. In May 1993, the DHS placed Teresa in the Anchorage House, a residential facility to aid her severe behavioral problems. At the facility, she received a great deal of therapy. Tracy and Scott continued to receive family therapy services to assist in parenting their other children. However, Tracy's participation in the services and her visitation with her daughter remained sporadic and inconsistent.

Tracy and Scott separated. Starting in November 1993, Tracy's visits with Teresa dropped off dramatically. She canceled visits and missed phone calls, which devastated Teresa. The DHS workers attempted to work with Tracy to foster a better relationship between she and her daughter without success.

Morris maintained interest in Teresa's well-being. He wrote and visited Teresa fairly frequently and followed suggestions by the DHS, in terms of working on his relationship with her. Morris expressed willingness to enter seek help for his violent behavior and parenting skills, but never actually received treatment. In August 1994, Morris became incarcerated for attacking and injuring a person following a domestic abuse incident. He was sentenced to a three-year sentence and expected at the earliest to be released towards the end of 1995. While in prison, he enrolled in, but has not received services to deal with his parenting skills and violent behavior.

In August 1994, the Guardian ad Litem for Teresa filed a petition to terminate both Morris and Tracy's parental rights. At the hearing, several case workers and therapists testified Teresa desperately needed permanent placement in a stable, nurturing home as soon as possible. Evidence indicated Teresa's behavioral and emotional problems had become so extreme that she could become institutionalized if she did not obtain permanent placement quickly. Testimony also showed Tracy was unable to provide for Teresa's needs as indicated by her inconsistent contacts with and indifference to her daughter. Service providers testified that Morris, while earnest about his desires to parent Teresa, has not shown an ability to care for her, has an extremely violent nature, and cannot provide a permanent home for Teresa within the time frame necessary to deal with her problems.

The district court entered an order terminating Morris and Tracy's rights pursuant to Iowa Code sections 232.116(1)(c), 232.116(1)(e),[1] and 232.117 (1993). The court found Tracy could not adequately care for her daughter. The court further found Morris could not currently care for Teresa, and "it is speculative whether he will ever be able to parent this child." The court observed Teresa needed permanency immediately and termination of parental rights is in the best interests of the child to fix permanency. Both Morris and Tracy 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.

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

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[1] Upon a review of the entire district court's decision and the petition for termination, we recognize a typographical error was made. The body of the trial court's decision indicates the correct section to terminate Tracy and Morris' parental rights under Iowa Code section 232.116(1)(e) instead of (1)(g).

> 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).

II. Termination of the Parental Rights of the Mother

Tracy contends the trial court erred in determining convincing evidence existed that Teresa could not be returned home. She notes prior to the termination hearings, she divorced Scott, the perpetrator of the sexual abuse and feels she is capable of caring for her daughter.

We find overwhelming evidence indicates Teresa cannot be returned to her mother's home. Case workers and therapists consistently testified Teresa's interaction with her mother has been devastating to her, due to Tracy's inconsistent visitation and unnurturing behavior. Testimony indicates Teresa's behavior has deteriorated rapidly as a result of Tracy's sporadic visitation. Tracy's parenting skills have not improved and we find overwhelming evidence, apart from the fear of sexual abuse from Scott, to indicate Teresa cannot be returned to Tracy's home.

Tracy also argues her parental rights should not have been terminated since the State failed to show by convincing evidence services were offered to her to correct the situation which led to adjudication. She specifically contends the services failed to take her mental deficiencies into consideration.

Tracy and Teresa have been receiving numerous services since 1989. Tracy was evaluated at the request of the DHS at the Iowa Clinics and service providers testified they were aware of her low intellectual functioning. Tracy at no time requested additional services, nor complained she was having difficulty understanding the services. *See In re B.K.K.*, 500 N.W.2d 54 (Iowa 1993) (suggestions for more or different services from the DHS should be made early in the process and not on appeal from the termination). Service providers also testified at the termination hearing attempts were made to aid Tracy in understanding instructions.[2] We find the DHS' efforts to provide services for Tracy carefully took into consideration her mental limitations.

Tracy finally contends the State did not prove Teresa will have a greater chance for permanency with a termination rather than maintaining unification efforts. She contends the termination is not in Teresa's best interests since it will be difficult for Teresa to find an adoptive home due to her age and behavioral problems.

We agree with the trial court that Teresa is in dire need for permanency in her life. Her struggle to maintain ties to her mother while still dealing with her emotional

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[2] Kim Vyverberg from Teresa's residence facility testified she knew Tracy was "special-ed" and would attempt to clarify directions and ask Tracy to repeat the directions back to her to make sure she understood. Kay Krings from the Anchorage house testified she requested and received a letter from Tracy's evaluating doctor which indicated she was diagnosed with a moderate retardation of approximately 70 I.Q. and they tailored their instructions accordingly, including writing things down and letting her know she could call about parenting problems at any time.

and behavioral problems have been devastating for her. Her problems have reached the stage where, unless she finds permanency soon, she will become institutionalized.

Our governing consideration is Teresa's best interest. While she may experience problems with adoption, Teresa should not have to wait and see if her mother could finally be able to parent her and deal with her special needs. Teresa's need for permanency is immediate. She should not suffer on the mere hope Tracy will be able to parent her. Testimony indicated Teresa is adoptable and was ready to become a part of a safe and stable adoptive home. *See In re T.C.*, 522 N.W.2d 106 (Iowa App. 1994) (declined to hold best interest of child is to refuse to terminate when DHS made no showing adoption arrangements were made).

We agree with the trial court it would be in Teresa's best interest to terminate Tracy's parental rights in order for her to achieve a greater chance of permanency through adoption.

III. Termination of the Parental Rights of the Father

Morris challenges the termination by claiming no real efforts were made to unite Teresa with him. *See* Iowa Code § 232.116(1)(c) (1993). He also claims the evidence did not support a finding Teresa had a greater chance of achieving permanency sooner through foster care or adoption than placement with him.

Before addressing the claims made by Morris, we note the district court terminated the parental rights of Morris under Iowa Code sections 232.116(1)(c) and (1)(e). The termination under section 232.116(1)(e) was based on a finding that

Teresa could not presently be returned to the custody of her parents as provided by Iowa Code section 232.102 (1993). We agree with this finding.

Morris unfortunately entered Teresa's life very late. He had no contact with Teresa until she was seven years old. Because of this, it was necessary to gradually introduce Morris into Teresa's life. The evidence shows Morris appeared genuine about his desire to become a part of his daughter's life, and cooperated with the unification efforts. However, after beginning the unification process and making progress, Morris committed another criminal act and became incarcerated in one of the state penal institutions for an expected term of approximately sixteen months. Considering the critical need for permanency in Teresa's life, Morris' incarceration became a critical factor. Furthermore, during his incarceration, Morris has failed to follow through with services. He testified he enrolled in a parenting class, a batterer's education class, and an anger management class, but despite his lengthy incarceration he had yet to actually begin the classes.

Time is marching on for Teresa and Morris is no more ready to care for her than he has been in the past. Morris even acknowledged he was not ready to care for Teresa if released. We agree with the district court Teresa cannot be returned to Morris as provided by section 232.102. *See In re J.S.*, 470 N.W.2d 48, 51 (Iowa App. 1991).

We also determine the DHS provided Morris with reasonable services to help him assume care of Teresa. Once Morris expressed a desire to become involved in

Teresa's life, it was necessary to proceed cautiously. Teresa had many special needs, and Tracy was resistant to Morris' sudden interest in Teresa after the years of absence. Morris also had special concerns to consider. Teresa's therapist was used to assist in the process and determine the appropriate means and time frame for unification. Under all the circumstances, we find the department made reasonable efforts to unite Teresa and Morris. Furthermore, Morris voiced no objection to the nature of the services or the efforts by the department until the termination hearing.

Finally, we agree with the district court termination of the parental rights of Morris is in the best interest of Teresa. *See In re M.S.*, 519 N.W.2d 398, 400 (Iowa App. 1994) (termination must be in the best interests of child even if statutory requirements are met). Teresa may not be promptly adopted, but there is even less indication Morris will be in a position to assume custody in the future. Morris is incarcerated, and unprepared to parent Teresa once he is released. Morris also has special problems of his own, and a family with special needs. It would be profoundly unfair to Teresa to expect her to wait any longer with such little realistic hope.

IV. Conclusion

We find clear and convincing evidence both Tracy and Morris' rights to parent Teresa should be terminated. Teresa has undergone great emotional turmoil at a very

young age and needs stability and care to deal with her needs. We affirm the trial court's decision to terminate.

AFFIRMED.