FILED
OCT 27 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-375 / 92-402

IN THE INTEREST OF J.W. and D.W., Minor Children,

R.R., Father,

Appellant,

D.W., Mother,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Juvenile Referee.

The mother and father appeal a juvenile court order terminating their parental rights as to their minor children. **AFFIRMED.**

John S. Pieters of Pieters, Pieters & Corzine, Waterloo, for appellant R.R.

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for appellant D.W.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

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

HABHAB, J.

FACTS

Rick Roberts[1] and Diana Webb[2] are the natural parents of two children: John Webb[3], born on June 25, 1988; and David Webb[4], born on August 20, 1989. Rick and Diana never married.

On February 13, 1990, Diana voluntarily admitted herself into a substance abuse treatment program. A few days later, an application for temporary removal was filed on behalf of John and David. The children were removed from Diana's custody and placed in the protective custody of the Iowa Department of Human Services (DHS). On May 3, 1990, an adjudicatory hearing was held, and Diana stipulated John and David were children in need of assistance (CINA). The district court adjudicated John and David CINA pursuant to Iowa Code sections 232.2(6)(k) and 232.2(6)(n) (1989).

On May 10, 1990, the children were returned to Diana's home. However, on June 29, 1990, they were removed from their mother and placed in foster care. At a dispositional

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1. This is not the father's real name; his initials are R.R.

2. This is not the mother's real name; her initials are D.W.

3. This is not the child's real name; his initials are J.W.

4. This is not the child's real name; his initials are D.W.

hearing on September 20, 1990, the court continued the children's placement in foster care. In March of 1991, the court reviewed its order and again continued the children's placement in foster care.

On May 7, 1991, the State filed a petition for termination of parental rights. On both January 13, 1992, and January 15, 1992, Diana called DHS and stated she wished to voluntarily terminate her parental rights because it was in the children's best interest. On January 22, 1992, Diana filed a written consent to terminate the parent-child relationship.

The case proceeded to trial, and the juvenile court found the relationship between Rick and Diana to be violent, chaotic, and unstable. The evidence established Rick regularly and severely abused Diana. He also exposed the children to this danger on at least two occasions. The juvenile court described Rick as an "individual who almost defies description." It then used the following adjectives to describe Rick: intelligent, sensitive, controlling, abusive, manipulative, malevolent, and cold. The court concluded these contradictory qualities are due, in part, to a brain injury Rick sustained which causes personality changes. These changes are exacerbated by Rick's continued use of alcohol.

The court found Rick's current wife, Melissa Smith[5], to be the one consistent person in his life. Rick and Melissa were married in March of 1990, but they have had an ongoing relationship for over eleven years. They are the natural parents of four children. The oldest child is eleven. There does not seem to be any abuse in this relationship.

The juvenile court ultimately concluded John and David would be imminently likely to be abused or neglected in Rick's care. Additionally, it found Rick's mental condition would prevent him from providing adequate care. Diana acknowledged she could not adequately care for the children. The court viewed adoption as the children's "only hope for long-term stability." Therefore, on March 6, 1992, the juvenile court terminated the parental rights of Diana and Rick pursuant to Iowa Code section 232.116(1)(g) (1991).

The mother and father separately appeal. We affirm.

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, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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.

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5. This is not the individual's real name; her initials are M.S.

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); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988).

In the past, the courts have recognized that parental interest in the integrity of the family unit exists. Dameron, 306 N.W.2d at 745. However, this interest is not absolute and may be forfeited by certain parental conduct. Id. Because the State, as parens patriae, has the duty to assure that every child within its borders receives property care and treatment, it must intercede when parents abdicate that responsibility. Id. (citations omitted).

ANALYSIS

We adopt the following findings of the juvenile court as our own:

> At the outset of these proceedings, [Diana] . . . appeared and consented to the termination of her parental rights. She was later called to testify. She documented her five-year

> relationship with [Rick] . . . . She testified to the physical abuse that she suffered at his hands and to the danger to which he exposed the children during at least two of these abusive incidents.
>
> [Diana's] . . . credibility has been substantially called into question.
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> * * * *
>
> [Rick] . . . has shown no ability to adapt to the needs of others. He has sought to fulfill only his own needs in his own way. At the same time, he views himself as a victim of the system. Such a self-consumed individual can give these needy children little.
>
> [Rick] . . . has found it inconvenient to participate in the treatment that he requires to be a healthy human being. He fails to see how this has dehabilitated him. He does not understand that by ignoring his own needs he prevents himself from having the skills to recognize the needs of others, especially those of [John and David] . . . .

I. Iowa Code section 232.116(1)(g).

Under Iowa Code section 232.116(1)(g), the court may order the termination of parental rights if it finds all of the following have occurred:

> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) 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 at the present time.

Iowa Code § 232.116(1)(g) (1991).

There is no dispute the first three subsections of Iowa Code section 232.116(1)(g) have been satisfied. Rick

asserts the State did not establish there was clear and convincing evidence the children could not be returned to his custody at the time of the termination hearing as provided in subsection (4). He also claims it is not in the children's best interest to terminate his parental rights. We disagree.

In January 1991, DHS explored the possibility of placing the children in Rick's home. However, DHS determined Rick's home was inappropriate without his cooperation with treatment for his brain injury and substance abuse. On June 14, 1991, DHS completed a home study on Rick's home. Thereafter, it recommended the children not be placed in Rick's home and that visitation remain supervised. Several concerns were noted. Professionals did not believe Rick could provide independent long-term care of the children. Rick's brain damage, judgment problems, and seizures resulting in explosive behavior would place the children at high risk for abuse. Rick was also lacking in parenting skills and was uncooperative with respect to any suggestions and treatment. Further, Diana testified to the serious physical abuse she suffered from Rick and to the danger he exposed the children to.

The record is clear that John and David would be at risk if placed in their father's home. We find the State proved the elements of Iowa Code section 232.116(1)(g) and

Rick's parental rights should be terminated. We affirm the juvenile court on this issue.

II. Appointment of a Guardian Ad Litem.

Diana claims the juvenile court should not have accepted her consent to terminate her parental rights because she was allegedly suffering from a mental illness known as "battered woman's syndrome" at the time she signed the consent. She claims this mental illness rendered her incompetent and, therefore, required the court to appoint a guardian ad litem to represent her interests. Consequently, she claims the termination of her parental rights should be voided. We disagree.

The State contends, inter alia, Diana's issues must be deemed waived due to her failure to raise these issues before the juvenile court. We have repeatedly held that ordinarily, matters not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974). During the entire course of this proceeding, Diana has never asserted that she is incompetent. No evidence was introduced to establish she was incompetent. Because this issue is raised for the first time on appeal, it was not properly preserved, and we are unable to address it.

Nevertheless, even if this issue were properly preserved, we find there has been no prejudicial error. The juvenile court did not terminate Diana's parental

rights under Iowa Code section 232.116(1)(a). Rather, it terminated her rights pursuant to Iowa Code section 232.116(1)(g). The evidence strongly supports this conclusion. Diana conceded at the time of the hearing she could not care for the children and they could not be returned home.

Furthermore, the record does not support Diana's contention she was incompetent. In May, Diana's psychiatrist stated, "She does not suffer from any psychiatric disorder which will cause any permanent disability on her part to be an effective mother." The record contains no assertion that Diana was incompetent so as to render her consent invalid. It was Diana who called DHS and initiated the voluntary consent. Moreover, she testified at length at the termination hearing. The juvenile court had ample opportunity to observe Diana's demeanor and responses and determine her consent was not impaired. We find the State proved the elements of Iowa Code section 232.116(1)(g) and Diana's parental rights should be terminated.

CONCLUSION

We find the requirements of Iowa Code section 232.116(1)(g) have been met and the parental rights of Rick and Diana should be terminated. We hold it is in the children's best interest to terminate the parental rights of their parents. After considering all issues presented, we affirm the juvenile court.

Costs of this appeal are taxed to the appellants.

AFFIRMED.