FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-530 / 90-473

IN THE INTEREST OF N.F., A Child,

J.M.H., Natural Mother,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, Judge.

J.M.H. appeals the termination of her parental rights. **AFFIRMED.**

Randal B. Caldwell of Caldwell, Caldwell & Caldwell, Newton, for appellant mother.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Katherine S. Miller-Todd, Assistant Attorney General, for appellee State.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

The child in question (N.F.) is a girl born in January 1989.

The child's mother suffers from mild mental retardation and serious mental illness. She has been diagnosed as having a schizo-affective disorder. She has suffered from hallucinations and psychotic symptoms, including a repeated auditory hallucination in which the voice of her deceased mother tells her to kill herself. She has a long history of promiscuous sexual behavior. (Apparently the father of this child is unknown.) She has frequently run away from supervised care settings, sometimes hitch-hiking to other states with truck drivers. She has little insight into the consequences of her actions. She is unable to perform simple daily living tasks such as preparing meals or managing money.

The mother has a long history of psychiatric hospitalization and residential treatment. She was involuntarily hospitalized in August 1988, while she was pregnant with N.F. She remained hospitalized at the time of the child's birth in January 1989. In March 1989 she was transferred to a county care facility where she has since remained.

Immediately after birth N.F. was adjudicated CINA and was placed in foster care where she has since remained. She has never been in the care of her mother and has never been alone with her mother. During visitation social

workers have observed the mother does not respond appropriately to the child. The mother sometimes displays no emotion or acknowledgment of N.F. When she does interact with the child, she relates only as a playmate. She is incapable of providing even minimal care for N.F.

In December 1989 the State filed a petition to terminate the mother's parental rights. After a hearing, the juvenile court terminated the mother's parental rights. The juvenile court relied on Iowa Code § 232.116(1)(j) (1989 supp.) (chronic mental illness of a parent) and 232.116(1)(g) (1989 supp.) (child under three who cannot safely be returned to a parent's home after a CINA adjudication and at least six months in foster care).

The mother has appealed from the termination order.

The mother contends the juvenile court erred by terminating her parental rights without appointing a guardian ad litem to represent her interests pursuant to Iowa Rule of Civil Procedure 13. She acknowledges she was represented by an appointed attorney at all relevant times, but she argues due to her mental illness she was also entitled to a guardian ad litem.

The mother also challenges the constitutionality of Iowa Code § 232.116(1)(j). That statute permits termination if the following conditions are met:

> (1) The child has been adjudicated a child in need of assistance pursuant to § 232.96 and custody has been transferred from the child's parents for placement pursuant to § 232.102.

> (2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.
>
> (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The mother contends § 232.116(1)(j) is unconstitutionally vague. She complains about the phrases "chronic mental illness" and "repeatedly institutionalized" in subsection 2, and about the following terms or phrases from subsection 3: "prognosis", "will not be able to be returned", "within a reasonable period of time", and "considering the child's age and need for a permanent home."

The mother also contends § 232.116(1)(j) denies equal protection and due process by discriminating against mentally ill persons. She argues the statute presumes mentally ill persons cannot care for their children and permits termination of a mentally ill parent's rights without the prior DHS services afforded to other parents.

In addition to her constitutional arguments regarding § 232.116(1)(j), the mother challenges the sufficiency of the evidence to support termination under that section. She contends the evidence failed to establish that she "presents a danger to self or others as evidenced by prior acts."

Finally, the mother contends even if termination was otherwise warranted, it should nonetheless be avoided under

Iowa Code § 232.116(3)(c) due to the alleged closeness of the parent-child relationship.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 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; In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988).

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). Our statutory termination provisions are preventative as well as remedial. Dameron, 306 N.W.2d at 745. Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. Id.

Initially, we dismiss as without merit appellant's contention a guardian ad litem should have been appointed for her. She was ably represented by appointed counsel at the termination proceeding. The same counsel had previously been her guardian ad litem in the prior CINA adjudication. It would thus seem he was in an excellent position to act in his client's best interest throughout this proceeding.

Additionally, this point does not appear to have been raised before this appeal. Issues raised on appeal for the first time are too late. In re Interest of Robbins, 230 N.W.2d 489, 494 (Iowa 1975).

Next, we turn to the termination itself. The trial court based its termination holding on two separate statutory grounds: Iowa Code §§ 232.116(1)(g) and 232.116(1)(j). As we find the evidence sufficient to support a termination under § 232.116(1)(g), we need not reach the constitutional arguments raised by appellant on § 232.116(1)(j). We generally do not reach constitutional issues if a narrower ground can be dispositive. In re Kramer, 297 N.W.2d 359, 361 (Iowa 1980); In re D.L.B., 345 N.W.2d 147, 149 (Iowa App. 1983).

Section 232.116(1)(g) requires the child be three years old or younger, and have been adjudicated a child in need of assistance. The custody must have been transferred from the child's parents for at least six of the past twelve months. There must be clear and convincing evidence the child can not be returned to the custody of the parents at the present time.

The evidence clearly shows the mother is unable to adequately care for her child. Extensive training has been attempted to increase her parenting skills. There has been no appreciable improvement. The mother is, in fact, incapable of taking care of herself as well. She has an extensive history of severe mental illness and frequent institutionalization. The child in this case should not be forced to suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977).

We dismiss as without merit the other issues raised in appellant's brief.

The order of the trial court is affirmed.

AFFIRMED.