FILED
AUG 27 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-318 / 92-182

IN THE INTEREST OF D.L.R. III, a/k/a D.L.S., A Minor Child,

K.S., Mother,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Juvenile Referee.

The mother appeals a juvenile court decision terminating her parental rights. **AFFIRMED.**

Thomas A. Vakulskas of Vakulskas & Hoffmeyer, P.C., Sioux City, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

Teresa O'Brien of Forker & Kanter, Sioux City, guardian ad litem for the child.

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

SCHLEGEL, P.J.

The mother appeals a juvenile court decision terminating her parental rights. She contends the State failed to prove by clear and convincing evidence the best interests of the child would be served by terminating her parental rights.

On July 31, 1990, K.S. gave birth to D.L.R. K.S., born June 9, 1975, was fifteen years of age at the time.[1] D.R., D.L.R.'s father, was also a juvenile. Prior to D.L.R.'s birth, K.S. lived with her mother, K.N., as a result of K.S.'s parents' divorce. K.S. and K.N. experienced difficulties, leading to the placement of K.S. in a mental health institution. Following K.S.'s release from the institution, K.N. suggested that K.S. live with her natural father in Sioux City, Iowa. K.S. moved in with her father, but this was unsatisfactory because of her father's lack of supervision and his delinquent behavior. K.S. then lived with D.R. and his mother for approximately eleven months.

Following the birth of D.L.R., both D.L.R. and K.S. were determined to be children in need of assistance (CINA) and were placed in the custody of the Department of Human Services. The juvenile court filed a dispositional order placing K.S. and D.L.R. in the Florence Crittenden shelter care facility where they could reside together and K.S.

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1. Throughout the court proceedings the court orders have erroneously shown K.S.'s date of birth as 6-9-79, which would mean she was eleven years old at her child's birth.

could receive parenting education. Following further hearing, both K.S. and D.L.R. were placed in joint foster care in the House of Mercy, a structured residential program for teenage mothers and their infants located in Des Moines, Iowa.

While residing at the House of Mercy, K.S. ran away from the facility and left D.L.R. unattended. K.S.'s actions resulted in a finding of denial of critical care and a modification of the dispositional order that placed them in joint foster care. As a result, the court ordered D.L.R. to be placed in family foster care. Arrangements were later made for placement of K.S. and D.L.R. in joint foster care in a private home, but K.S. declined that alternative. She expressed a desire, instead, to be placed with D.L.R. in her mother, K.N.'s, home in Papillion, Nebraska. This request was refused after it was determined problems existed between K.S. and K.N. and such placement would not be in the best interests of D.L.R.

At that time K.S. asked to be removed from the custody of the Department of Human Services and, although her attorney advised against it, the removal was approved by the court, and the CINA case involving K.S. was dismissed. D.L.R. was placed in foster care with a family in the Sioux City area and was later placed in temporary custody with his maternal grandmother, K.N., when he began bonding with the foster family.

K.S. resided with D.L.R.'s paternal great-aunt in Sioux City, and she later moved into the home of her boyfriend's parents. K.S. maintained contact with her mother in Papillion by telephone, but she seldom asked about the condition of D.L.R. K.S. visited with D.L.R. only on a sporadic basis. K.S. asked K.N.'s permission to return to K.N.'s home, but K.N. refused. Although K.S. expressed a desire to parent D.L.R. early in D.L.R.'s life, she did little to show a genuine interest in D.L.R.'s well-being.

On August 27, 1991, the State filed a petition for termination of parental rights seeking to terminate the parental rights of both K.S. and D.R. Upon hearing on this petition and upon hearing on a motion to modify disposition, the juvenile court terminated the parental rights of D.L.R.'s parents and transferred guardianship and custody of D.L.R. to K.N., his maternal grandmother, intending ultimate adoption of D.L.R. by K.N.

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 considering a termination of parental rights, the court shall give primary consideration to the physical, mental, and emotional condition and needs of the child.

Central to considerations of termination in these cases are the best interests of the child. Iowa R. App. P. 14(f)(15); In the Interest of 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., 414 N.W.2d 609, 613 (Iowa 1987), cert denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988).

The State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment. It must intercede when parents abdicate that responsibility. Dameron, 306 N.W.2d at 745.

The trial court found that D.L.R. had been abandoned by his mother, K.S., and both abandoned and deserted by his father, D.R.

> "Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties or privileges inherent in the parent-child relationship.

Iowa Code section 232.2(1) (1991).

> "Desertion" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship.

Iowa Code section 232.2(6A) (1991).

Having carefully reviewed the record, we find K.S. has abandoned D.L.R. as defined by Iowa Code section 232.2(1) (1991). She has failed to give attention to the needs of the child and has failed to make necessary efforts to parent the child, thereby surrendering the parental rights, duties and privileges inherent in the parent-child relationship. She has sought, instead, to satisfy her own needs and has refused to take the steps necessary to parent D.L.R.

D.R., the father of D.L.R., has wholly failed to take any interest in the child for more than six months and has remained ensnarled in the juvenile court for acts of delinquency and failure to abide the rules of the court. He has made no effort to exercise any of the rights, privileges, or duties of a parent with respect to D.L.R. He has abandoned and deserted D.L.R.

The trial court also found grounds for termination under Iowa Code section 232.116(1)(g) (1991). This section provides the court may order the termination of parental rights on the following grounds:

> (1) The child is three years of age or younger.
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> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
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> (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.

The court determined all the conditions set forth in Iowa Code section 232.116(1)(g) (1991) had been fulfilled; we agree. The first three provisions of the section are undisputed, and the fourth provision is obvious from the evidence. No indication exists that either parent is in a position to provide a home for D.L.R. No indication exists that either parent is in a position to provide proper parenting to D.L.R. There is clear and convincing evidence in this record that the child cannot be returned to the custody of the child's parents at the present time.

The case of K.S. is tragic in many ways. K.S. was unhappy in the home of her mother and stepfather. At the age of thirteen, after attempting to deal with her problems at home, K.S. was sent away by her mother to live with her father. Living with K.S.'s father adversely affected K.S. because of her father's delinquency. At the age of fourteen, K.S. became pregnant by a minor male. Barely fifteen years of age, K.S. bore D.L.R. K.S. was ill-equipped as a parent; she was a child without a home. The fact K.S.'s CINA case was dismissed merely because she requested a dismissal is unconscionable. The State failed her, her family failed her, and she failed her own family.

Our paramount concern here, however, must be the determination of D.L.R.'s best interests. Even though

evidence indicates K.S. has made progress in turning her life around, D.L.R. should not be forced to await the maturity of his mother and father. He needs the security of a loving home; he is afforded such security with K.N.

We affirm the trial court.

AFFIRMED.