FILED
OCT 05 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-403 / 93-0443

IN THE INTEREST OF J.O. and J.O., Minor Children.

R.O., Mother,

Appellant.

000357

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop, Juvenile Court Referee.

The natural mother of two minor children appeals the district court's judgment terminating her parental rights. **AFFIRMED.**

Patrick L. Wilson of the Wilson Law Office, Marshalltown, for appellant mother.

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

Stephen T. Brennecke, Marshalltown, guardian ad litem for minor children.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

The natural mother of two minor children appeals the district court's judgment terminating her parental rights.[1] The mother argues the State failed to prove by clear and convincing evidence that at the time of the termination hearings the children could not be returned to her care and custody.

R.O. is the mother of two minor children, both boys, one born in 1983 and the other born in 1989. In July 1989 R.O. became involved with the Iowa Department of Human Services when the department became concerned about R.O.'s ability to care for her first-born son. R.O. suffered from grand mal seizures and suffered from alcohol abuse which aggravated her existing condition. R.O. did not take medication regularly to control her seizures. One month after the birth of R.O.'s second child, two founded child abuse incidents were reported. Both children were adjudicated as children in need of assistance on November 28, 1989.

At the dispositional hearing, the juvenile court determined the boys could remain in their mother's care since the grandmother also resided in the home. However, R.O. began drinking heavily and staying out all night.

---

1. The parental rights of these children's fathers and the parent-child relationships existing between these children and their fathers were also terminated by the district court. The fathers have not appealed the district court's judgment.

000259

R.O. also began to have more frequent seizures, brought on by increased alcohol consumption. The grandmother left the home, and the children were temporarily removed on February 8, 1990. The custody of the boys was subsequently transferred to the DHS.

R.O.'s psychological evaluation revealed she is mildly retarded, is passive-aggressive, has a personality disorder, and suffers from grand mal seizures which are exacerbated by her alcohol abuse. Although R.O. was ordered to attend counseling sessions, R.O. often failed to attend or was significantly late for her appointments. R.O. attended some substance abuse counseling, but did not admit she had a problem with alcohol. R.O. never completed the intended courses on parenting.

Although R.O. had been offered numerous services since 1990, very little progress had been made by 1992. During that period, R.O. expressed her wish that the boys' placement in foster care be continued. R.O. was also hospitalized for severe seizures and depression. R.O. expressed her desire that if the foster parents wanted to adopt the boys, she would terminate her parental rights, since she believed she was incapable of caring for the children. R.O. requested that her visitation with the children be decreased.

On June 1, 1992, the DHS case worker filed a report recommending that R.O.'s parental rights be terminated. Although R.O. requested a number of visits with the

000360

children, the children did not want to see R.O. The State filed the present termination of parental rights on October 7, 1992. Following a hearing, the district court terminated R.O.'s parental rights to the two boys, and R.O. has appealed. We affirm.

R.O. contends she did attend counseling sessions offered by the DHS but that the counselors set unrealistic expectations for her. R.O. argues the reason she failed to attend some of the counseling sessions was because she had her left foot partially amputated and could not drive a car. Furthermore, R.O. claims she had not abused alcohol for a long period of time at the time of the hearing and argues the State attempted to make her feel guilty so that she would agree to terminate her parental rights. In addition, R.O. points out that the DHS caseworker noted the children seemed to enjoy a bond with R.O. while they were visiting her and maintains she would have been granted more visitation with the children had the DHS case workers been available to set up appointments.

The children's guardian ad litem agreed with the State's contention that the children could not be returned to their mother. The guardian ad litem points out that on a number of occasions the DHS workers found R.O. to be intoxicated by 8 a.m.

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

000281

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 interests of the children. 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).

The juvenile court terminated the parental rights of R.O. and the parent-child relationships existing between R.O. and these minor children pursuant to Iowa Code sections 232.116(1)(g) and (e) (1991). After concluding the State had successfully proven the first three elements of each of these code sections by clear and convincing evidence, the juvenile court noted:

> The Court must also conclude that the State has established the fourth and final element by clear and convincing evidence in that the Court determines that the children cannot be returned to the custody of [R.O.] as provided in Section 232.102, Code of Iowa, at the present time. [R.O.] has, through essentially her own willpower, made progress concerning her alcohol and substance abuse problem. However, she has consistently

> refused to accept the services of the Department of Human Services to identify and correct the initial needs concerning her lack of parenting skills regarding appropriate discipline, setting of limits and consistent structure. She has also resisted efforts at developing self-help and self-living skills, budgeting and the ability to work with others. [R.O.] has the intellectual ability to do the things required of her by this Court and the caseworkers. She chose not to do so in a typical display of passive-aggressive behavior.
>
> She again went to SATUCI for further evaluation and treatment only after the termination of parental rights petitions were staring her in the face. She has not gone back to individual therapy since July of 1991, in spite of various orders of the Court and prodding of the caseworker. This is not a situation where the mother's mental ability makes her incapable of learning appropriate parenting skills. This is a situation where she has chosen not to apply herself to the task of meeting these children's present needs. The Court must also conclude that she is not capable of adapting to their future needs.

We agree with the juvenile court's thorough assessment of the situation surrounding the termination of R.O.'s parental rights. Furthermore, we share the juvenile court's concern that these children would continue to be children in need of assistance as defined by Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(f) if returned to R.O.'s custody. While the record indicates R.O. does care about these children, it also reflects the conclusive fact that R.O. has been unable to acknowledge her need for change or to motivate herself to improve her parenting skills.

These children have resided in family foster care since February of 1990. A child should not be forced to endlessly suffer the parentless limbo of foster care. In

000363

re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990); Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The child need not endlessly await the maturity of the child's natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." In re L.L., 459 N.W.2d 489, 495 (Iowa 1990).

Having thoroughly reviewed the record in this case, we affirm the juvenile court's termination of R.O.'s parental rights to these two minor children.

AFFIRMED.