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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF
S L M and C M.,
Minor Children.

E.C , Mother,
Appellant.

Filed January 29, 1986

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5-562
85-532

Appeal from the Iowa District Court for Mahaska County - Gene Glenn, Juvenile Court Referee.

The natural mother of two children appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

David D. Dixon of Heslinga & Heslinga, Oskaloosa, for appellant mother.

Thomas J. Miller, Attorney General; Kathrine S. Miller-Todd, Assistant Attorney General; and Charles A. Stream, Mahaska County Attorney, for appellee State

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

The natural mother of two children appeals from the juvenile court order terminating her parental rights. We affirm the trial court's ruling.

The children in question are siblings, S.L.M., a girl born in 1975, and C.M., a boy born in 1977. Their parents' marriage was dissolved in 1978, and the children were placed in the custody of E.C., their mother. The father did not visit or communicate with the children for several years after March of 1979, although he did send them Christmas gifts in 1984 after the present termination proceeding had been filed. He also telephoned the children's Iowa social workers from his Ohio home on two occasions in late 1984 and early 1985. However, since resurfacing he has made no attempt to see the children.

In 1980, the children's mother remarried. It is undisputed that the stepfather physically abused the children. S.L.M. was found to be a child in need of assistance in October 1981, and C.M. in February of 1983. Both children have been in foster care continuously since early 1983. The mother did file a petition to dissolve her marriage to the stepfather; however, she has discontinued this proceeding. She was living with the stepfather at the time of trial.

In November of 1984, the State filed a petition to terminate the parental rights of both the mother and the natural father. After a hearing, the juvenile court terminated the parental rights of both the mother and the natural father. The juvenile court found that the natural father had abandoned the children. As to the mother, the juvenile court found that termination was justified for the reasons stated in Iowa Code section 232.116(5) (1985). That statute permits termination if the court finds:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
> b. The custody of the child has been transferred from the child's parents for placement pursuant to section

232.102 for at least twelve of the last eighteen months; and

c. 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.

E.C. has appealed from the termination order. She contends the juvenile court erred by failing to consider the effect of Iowa Code section 232.116(6) (1985) which provides in relevant part:

> Notwithstanding the provisions of subsections 2 to 5 the court need not terminate the relationship between parents and child if the court finds:
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> * * *
>
> c. There is clear and convincing evidence that such termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

The mother maintains that termination, even if otherwise justified under § 232.116(5), should be avoided under § 223.116(6) because the evidence showed that a close and loving relationship existed between her and the children. The mother also submits that the termination of the natural father's parental rights was not justified.

I.

Our review of a proceeding to terminate parental rights is de novo. In the Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984); cert. denied ____ U.S. ____, 105 S. Ct. 1212, ____ L. Ed. 2d ____ (1985).

> Central to the determination of this issue is "the best interests of the child. In this connection, we look to the child's long-range as well as immediate interests. Hence, we necessarily consider what the future likely 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 that parent is capable of providing. [Authorities.]

Id. at 492 (citing In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The trial court properly applied the provisions of § 232.116(5) to these facts.

As to the argument made under § 232.116(6) (1985), we are unable to conclude that termination would be detrimental at this time due to the closeness of the parent-child relationship.

No doubt this mother loves her children. Nonetheless, E.C. also decided to continue to live with the children's stepfather, who has abused the children. S L.M. has ran away from home to avoid their stepfather and stated she was afraid to return home because "I'll be dead in a week." S.L.M. has expressed a desire never to see her stepfather again and would rather be adopted.

C.M. initially wanted to stay with his mother and was not as frightened of his stepfather as was his older sister. Subsequently, C.M. became disillusioned with his mother because she promised to leave his stepfather but would not do it. C.M.'s mother has not seen him for four weeks.

Termination would, undoubtedly, be emotionally difficult for the children, particularly C.M. Given the parties' past relationship, the inescapable conclusion is that the children's home environment with their mother, as long as she resides with the children's stepfather, will in all likelihood never improve. Thus, as difficult as it may be, termination of the mother's parental rights is in the best interests of both children. Even though the children have a close relationship with their mother, the closeness of that relationship is not of a sufficient degree under section 232.116(6) to merit a reversal of the termination order.

The mother suggests that even if the children are not returned to her, that an additional period of foster care would be a better alternative than termination of parental rights. The juvenile court noted that the mother loved the children, visited them regularly in foster care, brought them gifts at a financial sacrifice, and had not herself been responsible for their abuse; however, the juvenile court concluded that termination was justified because of the mother's

inability or failure to protect the children from the stepfather, as demonstrated by the fact that she continued to live with the stepfather at trial time. We feel that after four years this situation has not improved and that prolonging the termination decision would be adverse to the best interests of the children. Cf. In the Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975) ("Children should not be made to suffer indefinitely in parentless limbo."); In the Interest of Loeffelholz, 162 N.W.2d 415, 425 (Iowa 1968) (children should not be compelled to wait for their parents' maturity).

II.

The mother asserts that because little is known about the natural father's current living environment, there is not clear and convincing evidence that the children cannot be returned to his custody. She points to his recent communication with the children as a hopeful sign, and she asserts that at the least a home study should be prepared before the natural father is determined to be unfit as a custodial parent. The mother argues that because termination of the natural father's parental rights was unwarranted her own parental rights could not properly be terminated and, that if a child can be returned to the home of either parent termination is improper under Iowa Code section 232.116(5)(c).

The trial court found the father had abandoned the children so as to justify terminating his rights. He does not contest this termination but his former wife does. We find clear and convincing evidence to support the trial court's ruling.

After the natural parents' divorce in 1978, the only contact the children had with their father was in 1979. After this time, the father apparently was imprisoned. He now resides in Ohio, receives disability payments from alleged brain damage, and has remarried a twenty-two year old who has a six-year child.

The social worker claimed it would not be in the best interests of the children to pursue living with their natural father. The children's psychotherapist stated that she did not have any opinion of the father's suitability as a custodial parent based apparently on his lack of interest. We conclude that sufficient evidence exists to find abandonment and that the natural father has minimal, if any, interest in being the children's custodial parent.

Despite this finding, E.C. claims § 232.116(5)(c) requires a finding that the child cannot be returned to the custody of either parent before termination of parental rights. Assuming, arguendo, that this accurately reflects the law, especially where the parents are divorced, the mother further contends that a home study of the natural father was necessary before finding that the natural father's rights should be terminated. The natural father does not contest the termination order, but rather E.C. raises the issue supposedly on her former husband's behalf so that his parental rights will not be terminated. Testimony indicated that it is usually in the best interests of the children to simultaneously terminate the rights of both parents.

The natural father has shown little interest in pursuing custody. The Iowa authorities contacted the Ohio authorities about conducting a home study. The Ohio authorities indicated if the natural father expressed an interest in having a home study, the Iowa authorities would be contacted. The father apparently never made such a request because the Iowa authorities were never contacted. The record does contain information and expert testimony regarding the natural father's living situation, even though a home study has not been made. Such information in the record leads us to conclude that no meaningful purpose would be served by conducting a home study of the natural father because he does not want custody of the children and would be incapable of providing a home environment which would be in the best interests of the children. Because

the father was properly found to have abandoned the children and did not contest the termination proceeding of which he had notice, we are not persuaded by E.C.'s position to avoid terminating the natural father's rights which would enable her to delay the termination order.

We, therefore, affirm the trial court's ruling that the rights of both parents be terminated.

AFFIRMED.