

IN THE COURT OF APPEALS OF IOWA

No. 0-296 / 90-09

FILED

JUN 26 1990

CLERK SUPREME COURT

IN THE INTEREST OF D.M.A., A Child,
T.A., Natural Mother,
Appellant.

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

The mother of a child appeals from the termination of
her parental rights. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan,
Condon & Klaessy, Marshalltown, for appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Judy Sheirbon, Assistant
Attorney General, for appellee State.

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

DONIELSON, P.J.

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The child in question (D.M.A.) is a boy born April 27, 1985. He has never had any significant contact with his natural father, and no appeal has been taken from the termination of the father's parental rights.

T.A., the boy's mother, has two other children, A.A. born March 5, 1987, and C.A. born January 29, 1989. Department of Human Services' (DHS) records indicate that since DHS involvement with D.M.A. began, there have been thirteen founded child abuse reports involving this family. On at least eight occasions since his birth, D.M.A. has resided away from his mother in either grandparent or foster care.

D.M.A. was adjudicated a child in need of assistance on November 24, 1987, due to his mother's failure to exercise a reasonable degree of care in supervising the child. The original dispositional order left D.M.A. in his mother's care subject to the protection of the Department of Human Services.

T.A. was offered a myriad of services to help her improve her housekeeping and parenting skills. Among the resources offered T.A. were the services of visiting nurses, homemaker health aides, parenting classes, individual counseling, and protective day care.

Despite the wealth of assistance offered T.A., D.M.A. was repeatedly removed from his mother's home in December 1987, February 1988, and again in May 1988. These removal

were predicated on the unsanitary conditions of the parental home, the apparent lack of parental supervision, allegations of physical abuse inflicted by T.A.'s boyfriend upon her children, and the mother's apparent attempt to flee the court's jurisdiction and conceal her children's whereabouts from DHS authorities. D.M.A. has not resided with his mother since May 1988 and has been in the care of his maternal grandparents since November 1988.

During the course of these proceedings, T.A. has exhibited violent or threatening behavior to service providers. In December of 1987, T.A. physically assaulted her social worker. She was profane and verbally threatened DHS staff with harm. She intimidated and was verbally abusive to those who sought to assist her in improving her parenting skills.

T.A. has a history of substance abuse, and she has had at least five placements at the Mental Health Institute in Cherokee. Witnesses before the juvenile court testified T.A.'s behavior is "cyclical." She has low periods in which her personal needs and substance abuse take priority over all else. During "good" times in T.A.'s emotional cycles, she seemed to recognize her parenting deficiencies and was receptive to DHS assistance. Unfortunately for her children, these upturns in T.A.'s behavior did not last long.

T.A.'s behavior indicates a great deal of immaturity and irresponsibility on her part. After her failed attempt

to conceal the children from DHS, T.A. had no contact with the department for nearly three months. She did not contact DHS until July 26, 1988, when she informed the department she was in Kansas City.

In June 1989, T.A. married a man who had acted as a baby-sitter for her children. She admitted she entered the marriage only to enable her to get her children back by creating the appearance of stability in her life. Despite the fact that her daughter, A.A., had been returned to her custody, T.A. left Marshall County in June 1989 and went to Waterloo. There she engaged in prostitution to support her drug and alcohol usage.

On July 19, 1989, a petition was filed to terminate T.A.'s parental rights to D.M.A. On August 8, 1989, T.A. checked herself into the Mental Health Institute at Cherokee. She testified she entered the institute in order "to get my kids back." Upon her discharge on September 6, 1989, T.A. was to be placed in a half-way house in Sioux City. She was "kicked out" of the house on her first day due to her inability to abide by the rules of the residence.

On October 3-4, 1989, a termination hearing was held. In a lengthy and thorough decision filed on December 14, 1989, the juvenile court referee concluded the State had established by clear and convincing evidence that D.M.A. could not be returned to the care of his mother without being subjected to harm as defined in sections

232.2(6)(c)(2) and 232.2(6)(f) of the Iowa Code. The mother now appeals from that decision.

I. Standard of Review. 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 (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.

Iowa Code section 232.116(1)(e), relied upon as the basis for termination in the case at bar, allows termination of the parent-child relationship if:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96;
- (2) 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
- (3) There is clear and convincing evidence the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The third requirement of this section is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code § 232.2(6), exist. In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

II. Clear and Convincing Evidence. On appeal, T.A. claims the juvenile court erred in terminating her parental rights. Rather than contesting the sufficiency of the evidence to sustain the juvenile court's conclusion that

D.M.A. cannot be protected from harm if returned to his mother's care, T.A. contends terminating her parental rights at this time was not in the minor child's best interests. She argues there was no need for a "rush to judgment" and the court should have granted her more time "to get her life together" so she could indeed meet the needs of her children.

We reject T.A.'s arguments. Central to a determination of this nature are the best interests of the child. In re R.J., 436 N.W.2d 630, 635 (Iowa 1989). In this connection, we look to the child's long-range as well as immediate interests. Id. Hence, we necessarily consider what the future likely holds for the child if returned to his mother's care. Insight for this determination can be gained from evidence of the mother's past performance, for that performance may be indicative of the quality of the future care she is capable of providing. Id. "[O]ur 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).

A child should not be forced to endlessly suffer the parentless limbo of foster care while awaiting the maturity of a parent. Id. at 200. "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), cert. denied, 485 U.S. 1008 (1988).

Despite repeated intervention and assistance by DE T.A. has made little progress in securing a safe and stable home environment for D.M.A. She testified as to her renewed commitment to a drug-free existence, yet within a day of release from the Mental Health Institute her conduct at the half-way house rendered her sincerity questionable. T.A.'s counselor, Darroll Roland, testified that T.A.'s inability to provide a safe and stable environment for her children does not even necessarily stem from her substance abuse problem. T.A.'s behavior is erratic and unpredictable. She is unable to follow through with a consistency on recommendations made to improve her parenting ability. She appears to have unrealistic expectations of her children, and she tends to affiliate with dysfunctional males who are prone to engage in abusive behavior towards her children.

D.M.A. has been diagnosed as having an adjustment disorder. Dr. Augspurger testified D.M.A.'s behavior problems are most likely the result of a stressful environment, and the doctor recommended termination of T.A.'s parental rights.

As noted earlier, D.M.A. has spent much of his young life being transferred back and forth from his mother's care to foster or grandparent care. No matter how many opportunities T.A. has been given, she has constantly failed to provide a suitable environment for D.M.A., and it is deemed D.M.A.'s problems should not be further exacerbated.

subjecting him to further attempts by his mother to "get her life together."

T.A. argues termination will not be in her son's best interest because of his siblings. D.M.A. has never resided with his younger brother, C.A., and he and A.A. were placed in separate custodial care in part because of D.M.A.'s engagement in violent behavior toward A.A. The juvenile court carefully considered the consequences of terminating T.A.'s parental rights in this case, and it concluded D.M.A.'s special behavioral and emotional problems justified his possible separation from A.A. and C.A. We agree. Clear and convincing evidence sustains the determination that D.M.A. cannot be protected from some harm which would justify his adjudication as a child in need of assistance if returned to his mother's care. The decision of the juvenile court is affirmed.

AFFIRMED.