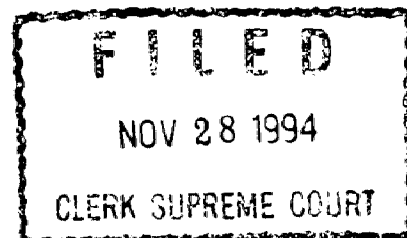


IN THE COURT OF APPEALS OF IOWA

No. 4-183 / 94-0081



IN THE INTEREST OF T.P., Minor Child,
K.H., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie
County, Gary K. Anderson, District Associate Judge.

The mother appeals the termination of her parental
rights to T.P. **AFFIRMED.**

Mark J. Eveloff, Council Bluffs, for appellant.

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

Roberta Megel of the Public Defender's Office, Council
Bluffs, guardian ad litem for minor child.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

Karen appeals the termination of her parental rights to T.P., born in October 1986. We affirm.

Karen and Rodney are the parents of T.P. and M.P., born in February 1984. They lived in Oklahoma but separated in 1988, and Rodney moved to Iowa. The children remained with Karen. In February 1988 the children were adjudicated children in need of assistance (CINA) by the Oklahoma juvenile court due to a founded report of physical abuse of T.P. by Karen and a founded report of sexual abuse of M.P. by an adolescent. The children were placed in temporary foster care. The CINA orders remained in effect until March 1990.

In April 1988 the court awarded Rodney physical custody of the children and through an interstate compact he moved them to Iowa. The Iowa Department of Human Services (Iowa DHS) has provided extensive services to Rodney and the children since he received custody of T.P. Karen and Rodney's marriage was dissolved in Oklahoma in December 1988. Rodney remarried in August 1990.

On December 13, 1990, the Oklahoma court granted Karen's motion to modify visitation to allow two weeks unsupervised visitation in Oklahoma with T.P. and M.P. However, the court made no attempt to contact the Iowa juvenile court to determine the status of T.P. and M.P. Had the Oklahoma court done so, it would have discovered compliance with this order was impossible since M.P. was

placed in foster care by Iowa court order in September 1990.

On December 18, 1990, T.P. was adjudicated CINA based on physical abuse by the stepmother. Karen attended the hearing and stipulated to the adjudication. She had her first supervised visit with the children since February 1988.

The juvenile court ordered T.P. placed in foster care in March 1991, and she was adjudicated CINA in June. The stepmother admitted to sexually abusing T.P., pleaded guilty to lascivious acts with a child, and was sentenced to a correctional facility. When she was released in April 1992, she moved in with Rodney. The court prohibited visitation between Rodney and his wife and T.P.

Karen did not contact T.P. between December 1990 and May 1991. From June 1991 through September 1992, Karen made no attempt to contact T.P., even though she moved closer to the Council Bluffs area. She had supervised visits with T.P. in September and November 1992 and in January 1993. The visits with Karen left T.P. highly disturbed.

In October 1992 the Iowa DHS learned of a July 1991 Oklahoma action where Karen lost custody of her two other children. The court restricted Karen to supervised visitation due to her violent and abusive behavior toward the children and their father. In March 1993 at the request of the Iowa DHS, the Oklahoma DHS did a home study

of Karen's parents to determine suitability of placement for T.P. and M.P. The Oklahoma DHS recommended against placement with Karen's parents because Karen remained a threat to the children.

Rodney separated from his wife and improved his parenting skills with M.P. who began visiting overnight. However, in June 1993 the State filed for termination of Karen's and Rodney's rights to T.P. Karen did not attend the hearing but was represented by counsel. The court did not terminate Rodney's rights, but did terminate Karen's rights pursuant to Iowa Code section 232.116(1)(e) (1993).

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 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.

Our primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(5); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). In deciding what is best for the child we look to the child's long-range as well as immediate interests. We also look to the past performance of the parents because it is an indication of the quality of care the parent is capable of providing in the future. In re A.M.S., 419 N.W.2d 723, 726 (Iowa 1988).

Karen contends her parental rights to T.P. should not be terminated if Rodney's parental rights remain intact. She also claims the State failed to produce clear and convincing evidence showing her parental rights should be terminated. We disagree.

Karen has had minimal contact with T.P. since February 1988. Despite having moved closer to the Council Bluffs area for a period of time, Karen failed to maintain steady contact with T.P. The record shows the few visits she did have with T.P. left T.P. highly disturbed and difficult to manage.

In addition, Karen's abusive behavior that resulted in T.P.'s Oklahoma CINA adjudication continues. She physically abused her other two children in Oklahoma. Karen has shown no effort to improve her parenting abilities since the time T.P. was removed from her custody in February 1988.

Termination of a noncustodial parent's rights does not hinge on whether the custodial parent's rights are terminated as well. See In re N.M., 491 N.W.2d 153, 155-56 (Iowa 1992). In cases meeting the criteria set forth in Iowa Code section 232.116(1)(e) the legislature has determined the interests and needs of a child are promoted by termination of parental rights. In re M.W., 458 N.W.2d 847, 850 (Iowa 1990).

Our de novo review reveals there is clear and convincing evidence showing it is in T.P.'s best interests

to terminate Karen's parental rights. We therefore affirm the decision of the juvenile court in its entirety.

AFFIRMED.

Donielson, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would remand with directions.

The issue in this appeal is whether the Iowa juvenile court should have terminated the parental rights of Karen, the birth mother of Tabitha. The parental rights of the father, Rodney, were not terminated. The Oklahoma dissolution court had awarded Tabitha's custody to Rodney. Rodney moved with the children to Iowa. When Rodney moved to Iowa, Oklahoma transferred supervision of the child to the Iowa Department of Human Services.

After the Oklahoma dissolution, Rodney remarried and Tabitha was found to be a child in need of assistance by the Iowa courts because she was sexually abused in Iowa by her stepmother. Karen attended the hearing and agreed Tabitha be found a child in need of assistance. Karen had a supervised visit with Tabitha. Tabitha was placed in foster care.

Karen moved from Oklahoma to Nebraska so she would be closer to her children and she had two supervised visits with Tabitha. Two other scheduled visits were not held, one because Karen got the date confused and the second because Tabitha was ill. Karen moved back to Oklahoma where she now lives.

In June 1993, the State of Iowa filed a petition to terminate Karen and Rodney's parental rights to Tabitha. The trial court did not terminate Rodney's parental rights

but did terminate Karen's parental rights. The basis for the termination of Karen's parental rights was Iowa Code section 232.116(1)(e) (1993).¹

Karen appeals contending there is not clear and convincing evidence supporting the termination. Karen also claims it is against Tabitha's best interests to terminate her parental rights when Rodney's remain intact.

In terminating Karen's parental rights, the juvenile court found:

Karen . . . has been given an ample opportunity to reassert her parental rights concerning Tabitha. Tabitha was removed from her care in Oklahoma by the Oklahoma Courts for physical abuse by Karen It is clear from the reports the Iowa Department of Human Services has received from the State of Oklahoma that Karen . . . has subsequently abused more of her children in her care and has had them removed from her care as well and that she has refused to participate in any services so the children could be returned to her care. The Court notes that she has consistently lived in the State of Oklahoma, which is a long distance from Iowa, but that has been her choice. She was given the opportunity in the State of Oklahoma to participate in services so the children could be returned to her and at the present time the Court finds that there is clear

1. The court finds that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

and convincing evidence that her parental rights should be terminated.

Karen argues it is not in the best interests of Tabitha to terminate the parental rights of one parent and not the other. She advances it was the intent of the state in filing the petition to terminate parental rights to free Tabitha for adoption. However; by terminating her parental rights and not Rodney's, Tabitha was not freed for adoption. Karen points out, in terminating her parental rights, the court is also terminating any obligation she may have to support the child.

Karen was not the parent or person whose conduct resulted in Tabitha being found by the Iowa court to be a child in need of assistance. Karen has minimal earnings and has not had the opportunity to visit the child in Iowa because of her financial circumstances.

Karen was given visitation by the Oklahoma court. Both Iowa and Oklahoma have enacted the Uniform Child Custody Jurisdiction Act. See Iowa Code § 598A; 43 Okla. St. §§ 501-527.

The Oklahoma court entered the dissolution decree and established the custody. Karen continues to reside in Oklahoma. Therefore, Oklahoma, as the state issuing the decree, retained jurisdiction. See In re Marriage of Cervetti, 497 N.W.2d 897, 899 (Iowa 1993). And as the home state of Tabitha, Iowa also has jurisdiction. See id. However, there is more information available in Oklahoma about Karen's abilities and deficiencies than in Iowa.

Consequently, it would appear best that the issue of terminating Karen's parental rights be litigated in Oklahoma.

The Uniform Child Custody Jurisdiction Act is directed to avoid jurisdictional competition and conflict with courts of other states and is aimed at assuring litigation concerning custody of a child takes place in the state where there is the most significant evidence concerning the issue. See Iowa Code § 598A.1. The Act, by definition of its terms, included hearings concerning visitation rights² and child neglect and dependency proceedings.³ And the Act clearly directs the duty of a court of this state, when it becomes aware of a proceeding concerning the custody of the child pending in another state, either before, after, or during the time the Iowa court assumes jurisdiction, shall stay the proceedings and communicate with the court in which the other proceeding is pending, to the end that the matter may be litigated in the more appropriate forum and information may be exchanged.⁴

2. "Custody determination" means a court decision and court orders and instructions providing for custody of a child, including visitation rights; . . . Iowa Code § 598A.2(2) (1993).

3. "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings. Iowa Code § 598.2(3) (1993).

4. If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate

The Iowa court had an obligation before addressing the termination to communicate with the Oklahoma court. Courts are vested with continuing jurisdiction to modify their own decrees. See In re Marriage of Leyda, 398 N.W.2d 815, 820 (Iowa 1987); In re S.R. v. M.R., 401 N.W.2d 221, 224 (Iowa App. 1986).

I believe the issue of termination of Karen's parental rights should not have been addressed until the Iowa juvenile court met its obligation under the Uniform Child Custody Jurisdiction Act, Iowa Code section 598A, to communicate with the Oklahoma district court. I would remand to the juvenile court with directions to communicate with the Oklahoma court.

with the court in which the other proceeding is pending, to the end that the issue may be litigated in the more appropriate forum and that information may be exchanged in accordance with sections 598A.19 to 598A.22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court, to the end that the issues may be litigated in the more appropriate forum. Iowa Code § 598A.6 (1993).