

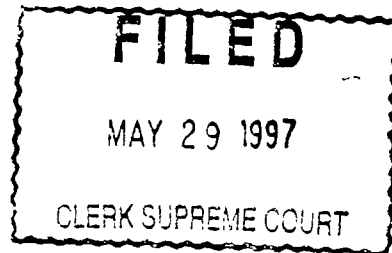
IN THE COURT OF APPEALS OF IOWA

No. 7-191 / 96-1588

000191

**IN THE INTEREST OF B.K. and J.J.,
Minor Children,**

**D.K., Mother,
Appellant.**



Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko,
Associate Juvenile Judge.

Mother appeals from the juvenile court order terminating her parental rights.

AFFIRMED.

James A. Schall, Storm Lake, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, Chris Odell, Assistant Attorney General, Philip E. Havens, County Attorney,
and Ted Brown, Assistant County Attorney, for appellee-State.

Gregory J. Schiller of Mack, Hansen, Gadd, Armstrong and Schiller, P.C.,
Storm Lake, guardian ad litem for minor children.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

HABHAB, C.J.

Diann K. is the mother of Bradley K., born May 4, 1987, and Johnathon J., born December 4, 1989. Dennis B. is Bradley's father, and Rick J. is Johnathon's father. In April 1993, Bradley and Johnathon were removed from Diann's custody after Bradley told a counselor Diann sexually abused him. There were also allegations that Diann and Rick, with whom Diann was living at the time, encouraged Bradley to observe them having sexual intercourse.

In September 1993, the court adjudicated the children in need of assistance and ordered Rick and Diann to obtain sexual abuse evaluations. The court noted both Bradley's and Johnathon's behavior "was out of control," and found clear and convincing evidence Diann engaged in sexually inappropriate behavior with both children. The children remained in the same foster care family until Bradley was removed to another family because he was sexually abusing Johnathon.

In April 1994, the court modified the dispositional order. Because Diann and Rick denied any sexual abuse, the court ordered them to participate in counseling to educate them about sexual abuse victims. In November 1994, after a review hearing, the court ordered Johnathon to remain with his foster family and ordered Bradley to remain at Beloit Lutheran Children's Home because of his extreme behavioral problems. It also ordered Diann and Rick to participate in sexual abuse treatment, and reunification would not occur until they received such treatment. Diann appealed

from this order and it was affirmed on October 31, 1995. *See In re B.K. & J.J.*, No. 94-2021 (Iowa App. Oct. 31, 1995).

In April 1996, the State filed a termination petition. At the time of the hearing on August 7, 1996, Diann was unemployed and living in Fort Dodge with her seventeen-year-old sister. Diann and Rick had separated in 1995 and Diann had moved to Fort Dodge shortly thereafter. She testified her transportation problems hindered her ability to visit her children. She continued to deny any sexual abuse, and stated she had not received any treatment.

Although showing some improvement, Bradley's behavioral problems were still severe. He was taking medication and attending counseling for his behavioral disorders. Johnathon was also showing some improvement with his foster family but, although his behavioral problems were not as severe as Bradley's, he required individual monitoring and attention. Evidence was presented that Diann's visitations had never increased to more than two hours at a time, and in the months just prior to trial she only visited them in March, April, and July.

The court terminated the parental rights of each parent.¹ The court noted Diann did not fully appreciate the severity of her children's behavioral disorders. It terminated her parental rights pursuant to Iowa Code section 232.116(1)(e) (1995) (child is four years of age or older, has been adjudicated a child in need of assistance,

¹ Rick and Dennis did not appeal the termination of their parental rights. The termination of their parental rights is not before us.

has been removed from the physical custody of the parents for at least twelve of the last eighteen months or for the last twelve consecutive months, and there is clear and convincing evidence that at the present time the child cannot be returned to the custody of the parents).

Diann appeals. She contends, in part, she complied with all requirements for reunification except for treatment for sexual offenders. She argues there is no evidence she sexually abused her children, and reasonable efforts were not made for reunification.

I. Standard of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

We consider what the future holds for the child if returned to his or her parents. Insight for his 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 T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Clear and Convincing Evidence. Diann argues there is not clear and convincing evidence within the record to support the juvenile court's determination that termination was in the best interests of the children. She maintains she did not sexually abuse either child. She further asserts she has complied with all services recommended by the Department except the sexual abuse perpetrator counseling.

In our de novo review of the record, we find there is clear and convincing evidence within the record which established Diann has perpetrated sexual abuse upon Bradley. Bradley has demonstrated knowledge of sex and sexual activity.² He has consistently given detailed descriptions of intercourse and reciprocal oral sex with Diann. He also reported she has allowed him to watch her have intercourse and oral sex with Rick. Johnathon also made allegations Diann had sexually abused him.

Diann has continually denied sexually abusing the children. It is essential for a parent to recognize past abuse before meaningful change can occur which is necessary to meet a child's needs.³ See *In re T.J.O.*, 527 N.W.2d 417, 421 (Iowa App. 1994). The children have suffered serious emotional consequences as a result of Diann's abuse. The record also reveals Bradley was sexually abusing Johnathon and that both children have experienced profound behavioral and emotional problems.

² We have intentionally omitted the explicit sexual conduct that took place between the mother and her son. To do so would add little to our system of jurisprudence.

³ Services should be offered regardless of whether or not the perpetrator of the abuse has made an admission. The question for the court then remains whether or not the perpetrator has successfully completed the services necessary for reunification.

Additionally, Diann is unwilling or unable to deal with the children's special needs. Although both children are progressing in their foster home placements, Bradley suffers from major depression, attention deficit hyperactive disorder (ADHD), and oppositional defiant disorder. He also continually acts out sexually on other children, including Johnathon, necessitating separate foster homes for the boys. Johnathon exhibits violent behavior and has a tendency to hurt other children and animals, and to hit, kick, and bite his foster parents.

When questioned about Johnathon's special needs at trial, Diann explained she felt he did not need to be labeled as having ADHD. She went on to explain, "From what I've seen of Johnathon and what the visits have been and what I've been around him, I mean he's just an active little boy."

We will not require children to endlessly await the maturity of their natural parent. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). These children need a structured, safe, stable home and a nurturing environment which Diann has been unwilling to provide in the past and shows no willingness to provide in the future. From our de novo review of the record, we find Diann lacks insight into the seriousness of her abuse of the children and their resulting special needs. She has had more than ample time to make the necessary changes in her life to assume the care of the children but has failed to do so. We simply will not return the children to an abusive home. Termination is in the best interests of Johnathon and Bradley. We affirm the juvenile court's termination of her parental rights.

III. Reasonable Efforts. Diann argues the State failed to make reasonable efforts to reunite her with Johnathon and Bradley. Specifically, she argues she should have received more visitation with the children. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re M.B.*, 553 N.W.2d 343 (Iowa App. 1996).

Our review of the record reveals Diann was free to have supervised visits with Bradley at any time, provided she give one week's notice of her intent to visit. Despite this fact, she requested only one visit with Bradley since Christmas of 1995 and only visited with him on three occasions. Although Diann cites transportation problems as her reason for not visiting the children more frequently, she did not request transportation assistance from the Department and voluntarily moved further away from the children's foster care placements.

The children have demonstrated behavioral problems during and following their visits with Diann. During one visit Diann had several family members over and did not provide adequate supervision or direction for the children. Frequently after visits, Johnathon would exhibit aggressive behavior.

Despite the services provided to Diann, she has continually been unwilling to participate in sexual abuse offender counseling. It was made clear to Diann these services were essential for reunification. In our de novo review of the record, we find Diann has been afforded the opportunity to receive services necessary to meet her individual needs. She has not availed herself of this opportunity; as such we

reject her argument that the Department failed to provide reasonable services for reunification.

AFFIRMED.

Cady, J., concurs; Sackett, J., specially concurs.

SACKETT, J. (concurring specially)

I concur specially. This case addresses the lives of two boys born in 1987 and 1989 who were removed from their mother's care by law enforcement over four years ago. The juvenile court has terminated the parental rights of their parents. This court has affirmed the termination. I agree with the decision to terminate parental rights. I find clear and convincing evidence supporting the termination, which is the least harmful of alternatives available for these children. We do not have the ability to serve the children's best interest.

These children have been seriously mistreated by their mother. They have made little or no progress during their three years in State care prior to the termination order. The majority opinion adequately points out the serious emotional and behavioral problems the children continue to suffer despite the State spending considerable money since removal on a number of services. I fear the possibility is greater that these children will be institutionalized rather than being adopted. There is little we can do now to change what has happened during the children's years in State care. Yet, we need to critically assess what happened to these children in those years with the hope of making programs more responsive and successful.

I have further concern we have not sufficiently utilized this opportunity to help the mother with her problem. I recognize theories that to be treated one must admit he or she perpetrated the abuse. Despite a finding that the mother sexually abused the

children, the justice system is not perfect and that finding could be flawed. Most importantly, if treatment is only provided to those who admit, the opportunity is missed to provide treatment to those sexual abusers who do not admit. The treatment may cause them to admit; but even if it does not, the chance is the person will gain something from the treatment, thus making him or her less of a danger to society. Judge Timko, early in the proceeding, addressed the mother's failure to admit the abuse and ordered the mother to have sexual abuse education which did not require she admit the abuse. Judge Timko's order was changed by a juvenile referee to require sexual abuse perpetrator treatment which demands an admission of guilt. We affirmed this decision in *In re B.K. and J.J.*, No. 94-2021 (Iowa App. 1995). I find our decision affirming the change of treatment was erroneous and should not establish our course in future decisions.