IN THE COURT OF APPEALS OF IOWA

No. 1-371 / 91-674

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF J.K.,
A Minor Child.

A.K.,

Mother-Appellant.

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Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Juvenile Referee.

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

Paula M. Stenlund, of Reynolds & Kenline, Dubuque, for the appellant mother.

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

Paul D. Healey, of Healey & Peters, Dubuque, guardian ad litem for the child.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Joshua, the child concerned in this case, was born in October 1988. His parents' marriage was marked by frequent discord and domestic violence. The father has had no substantial role in the child's life for some time.

The child was placed in foster care only days after his birth, due to concerns by hospital employees that the mother showed little interest in him and seemed unprepared to care for him. Although there have been two brief and unsuccessful placements with the mother, Joshua has been in foster care continuously since September 1990. He has lived in five foster homes.

The mother suffers from a manic-depressive illness. She also suffers from severe alcohol abuse, and has on occasion used other drugs as well. She has incurred several arrests for operating a vehicle while intoxicated. One of these arrests resulted from an accident while the child was in her car.

In December 1990 the State filed a petition to terminate the parental rights of both natural parents. After a hearing, the juvenile court terminated the parental rights of both parents. With respect to the mother, the juvenile court relied on the ground stated in Iowa Code section 232.116(1)(g). That statute permits termination if a child is three years of age or younger, has been adjudicated CINA, has been in foster care for six of the

last twelve months, and cannot safely be returned to the parents' care. Regarding the father, the juvenile court relied on additional grounds, including abandonment and desertion. The father makes no appeal. The mother has appealed from the termination order.

The mother challenges the sufficiency of the evidence to establish that the child cannot safely be returned to her care.

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, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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.

The primary concern in termination proceedings is the best interest of the child. 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 to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

RISK OF IMMINENT HARM: The sole issue on appeal is whether there was clear and convincing evidence that Joshua could not be returned to his mother's care without risk of imminent harm.

Joshua has from nearly the day of his birth, lived in the wake of his mother's personal obstacles in life. While his mother has fought her battles with manic depression, marital discord, and substance abuse, she has not won the war. The truly unsettling question before us is whether Joshua must remain on her battlefields.

While his mother struggled with manic depression at Joshua's birth, he waited for a bed in which to sleep. While his mother took lithium and sought mental health counseling, he waited in homes of foster care. While his mother sought treatment for alcohol, Joshua waited in more homes of foster care. It was Joshua who remained in the back seat, while his mother, under the influence of alcohol, drove them into an accident. While his mother's unfortunate condition left her disoriented, confused and agitated, Joshua waited four days for diapers. While his mother flushed her medication down the toilet, Joshua waited. While this mother struggles with psychiatrists and challenges further psychological treatment, Joshua waits.

The termination of parental rights weighs heavy upon us all. Were the measure of a child's best interests solely to rest upon a parent's love, this court, would seldom

intervene in the precious right of parenthood. Among rights, there is perhaps no other right near precious as this, unless it be a child's right in life to receive protection and care. Where a parent's personal obstacles in life tragically clash with the needs of his or her child, we must find the child's interests by necessity prevail. We do not say this mother's struggle should be ignored. The record shows her effort admirable. Joshua however, must not be required to remain on her battlefield longer. He has waited long enough. His safety and care in that setting have been clearly and convincingly shown to be at risk. We affirm the trial court.

AFFIRMED.