FILED
NOV 28 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-477 / 94-433

IN THE INTEREST OF H.T., Minor Child,

J.T., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Judge.

J.T., the mother, appeals termination of her parental rights to H.T. **AFFIRMED.**

Artis Reis of Smith, Reis & Phillips, West Des Moines, for appellant-mother.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee-State.

Michelle Chenoweth, Youth Law Center, Des Moines, guardian ad litem, for minor child.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

The appellant challenges the termination of her parental rights. She claims the long-term best interests of her daughter and the placement of custody with the child's father warrant a continuation of her parental rights. We disagree and affirm the juvenile court's decision.

Joanne is the mother of Heather, born July 5, 1990, and Jonathan, born February 7, 1988. Both children were removed from the mother's home on March 5, 1992. Jonathan had been physically abused by the mother's boyfriend and was taken to the hospital suffering from life threatening injuries which have left him permanently brain damaged.

Among the injuries Jonathan sustained during the two-week period preceding March 5, 1992, were: a fractured arm; bruises across his chest, jaw line, forehead, upper arms, shoulder, penis, scrotum, and buttocks; a lacerated liver; a tear in the transverse mesocolon; bleeding on the right side of the brain causing the brain to be pushed to the left; contusions over the eye; a deep burn on the entire palm area of his right hand; an injury to the abdomen; and anemia due to a loss of blood. There was no evidence to indicate Heather had received any injuries while in her mother's care.

The State filed CINA and termination petitions which were heard on July 1, 1992. The juvenile court adjudicated the children as CINA but dismissed the petition to

terminate parental rights due to the failure to offer services as required by Iowa Code section 232.116(h). The State appealed the juvenile court's failure to grant a termination and the mother cross-appealed the adjudication of Heather as a child in need of assistance. The juvenile court judgment was affirmed on appeal. See In re H.R.T., No. 2-645/92-1179 (Iowa App. Feb. 2, 1993). Heather was placed in the custody of her father in Missouri (they later moved to California), and Jonathan was placed with his maternal aunt and her husband subject to DHS supervision.

In November 1992 Joanne was found guilty of three counts of child endangerment in the first degree and sentenced to consecutive terms of ten years on each count. This conviction was recently affirmed by the Iowa Court of Appeals, although the sentence was vacated and remanded for resentencing consistent with Iowa Code section 901.5 and Iowa R. Crim. P. 22(3)(d). See State v. Taggart, No. 4-186/93-159 (Iowa App. October 25, 1994).

The State filed another termination petition on May 4, 1993, and sought to terminate Joanne's parental rights pursuant to Iowa Code sections 232.116(1)(g) and (i). Joanne voluntarily agreed to the termination of her parental rights to Jonathan so he could be adopted by the aunt and uncle who had been caring for him. She contested the termination of her rights to Heather. The juvenile court concluded the State had proven all of the elements of

sections 232.116(1)(g)and (i) and terminated Joanne's rights to Heather.

Joanne has appealed the termination of her parental rights. We utilize de novo review in determining if there is clear and convincing evidence to support the termination. A child's rights and needs are paramount in these proceedings. In re S.A., 502 N.W.2d 23, 25 (Iowa App. 1993). The primary concern in termination proceedings is the best interests of the child.

> 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) (citations omitted.)

In her brief Joanne does not dispute the applicability of sections 232.116(g) and (i) or that the State proved each element required under those sections. Instead, she claims Heather's long-term best interests will be better served by allowing her to retain her parental rights, and she refers the court to Iowa Code sections 232.116(3)(a) and (c). These discretionary provisions allow a court not to terminate parental rights if it finds a relative has legal custody of a child or there is clear and convincing

evidence the termination would be detrimental to the child due to the closeness of the parent-child relationship.

The juvenile court found Joanne knew of the horrifying injuries being inflicted upon her son yet failed to take steps to protect him until he was near death. She had declined an opportunity to have the abuser removed from the home in which she and her children were residing. Furthermore, Joanne had failed to make any intrinsic psychological changes and continued to minimize and deny her role in what had occurred.

At the time of the termination hearing Joanne was serving a thirty-year sentence at the Iowa Correctional Institution for Women. Her projected date of release was the year 2007. Her parole board risk factor is 09 which means all five parole board members must agree to her release. Even with the prospect of resentencing, it is unlikely Joanne will be released from prison within five years.

Heather was twenty months old when removed from Joanne's care. It is extremely doubtful Joanne could cultivate or maintain a meaningful relationship with her daughter while incarcerated. From all reports Heather has flourished in the care of her father and his family. Heather is entitled to a sense of security and permanency. There are situations in which a child in the custody of one parent will benefit from the termination of the other parent's rights. See, e.g., In re N.M., 491 N.W.2d 153,

155 (Iowa 1992). We believe it was in Heather's best interests not to invoke the discretionary provisions of section 232.116(3) and to terminate Joanne's parental rights.

Finally, Joanne claims the purported instability of Heather's father should have been considered in determining if it was in Heather's best interest to terminate Joanne's parental rights. Evidence regarding the father's parenting ability is not directly relevant or material to a determination of whether Joanne's parental rights should be terminated. However, we have reviewed the entire record and find no merit in this argument.

We find the State has met its burden by clear and convincing evidence and the juvenile court's termination of Joanne's parental rights should be affirmed.

AFFIRMED.