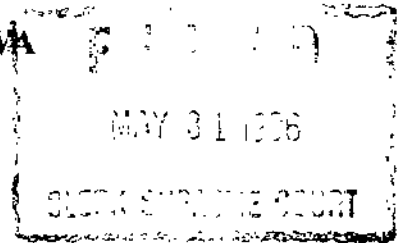


IN THE COURT OF APPEALS OF IOWA

No. 6-279 / 95-1796



IN THE INTEREST OF B.T., MINOR CHILD,

V.T., Mother,
Appellant,

Appeal from the Iowa District Court for Linn County, Patrick R. Grady,
Juvenile Court, Judge.

V.T. appeals the juvenile court order terminating her parental rights to her
minor child, B.T. **AFFIRMED.**

Mona Knoll of Nazette, Marner, Good, Wendt & Knoll, Cedar Rapids, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Rebecca Belcher, Assistant County Attorney, for appellee
State.

Duane Rohovit, Assistant Public Defender, Cedar Rapids, guardian ad litem
for minor **child.**

Considered by Cady, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

000380

CADY, J.

Vickie T. appeals the juvenile court's order terminating her parental rights to her daughter Brittany. On our de novo review, we affirm the termination.

Vickie is the mother of four children. Brittany was born September 29, 1990, and is the only child at issue. Vickie began receiving services from the Department of Human Services (DHS) in November 1990, due to allegations of child abuse by the father of Brittany's siblings. Vickie and the children moved into a battered women's shelter.

In February 1991, Brittany, as well as her other three siblings, was adjudicated to be a child in need of assistance. She was later placed into family foster care with liberal visitation granted to Vickie. Despite their abusive relationship, Vickie and Brittany's siblings returned to live with the sibling's father. Vickie and her children later moved into an efficiency apartment.

A substance abuse evaluation in April 1991, indicated Vickie abused alcohol and prescription medications. Vickie's children and others indicated she had a long-term alcohol dependence problem. During Vickie's out-patient treatment for her addictions, the DHS received reports she was consuming alcohol. In November 1991, Vickie successfully completed the out-patient substance abuse program and Brittany was returned to the home.

In September 1992, the DHS received a child abuse referral reporting Vickie was about to be evicted from her apartment in three days, was drinking heavily, and relied upon the oldest daughter for caretaking responsibilities for Brittany. She voluntarily placed her three daughters into foster care. Vickie then checked herself into the hospital and remained until October 1992. She was hospitalized three times in the next three months. When she was not in the hospital, reports indicated Vickie continued to use alcohol, even during visits with her children.

Supervised visitation with Brittany and the other girls was ordered. Vickie entered into an intensive out-patient program, and appeared to be making progress. However, in March 1993, she was arrested for second-degree arson and fourth-degree theft. She completed an in-patient treatment program in May 1993.

Vickie began out-patient services, but did not fully participate. DHS workers visited her home and often found her intoxicated and belligerent, even while her children were visiting. In July 1993, Vickie's sister committed her to the hospital, and she was eventually sent to the Mental Health Institute. Upon her release, she cooperated with DHS workers and made significant progress and preparations for a reunification between Vickie and her daughters began in June 1994.

While dropping off Brittany for an overnight visit, a DHS worker found Vickie extremely intoxicated, and the worker refused to permit the visit. Vickie maintained it was her only relapse in nine months. However, the DHS learned Vickie had been

arrested in April 1994, for public intoxication and theft of alcohol from a grocery store.

In September 1994, Vickie was again arrested for public intoxication. Reports detailed the negative affects her actions were having on Brittany. The Child Development Clinic conducted an evaluation and recommended a termination of parental rights and a decrease in visitation. Following her release from jail, Vickie successfully completed treatment for substance abuse, and supervised visitation was resumed in December 1994.

Vickie moved into an apartment, began receiving social security income, and appeared to be progressing well in her treatments. However, in June 1994, Vickie again was incarcerated and tested positive for cocaine and marijuana use. Vickie indicated she did not believe her use of marijuana was a problem, since she was not consuming alcohol. Brittany had no further visits with Vickie.

Following a hearing, the juvenile court terminated Vickie's parental rights over Brittany pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(k) (1995). Vickie ~~appeals~~ contending the State failed to prove Brittany cannot be returned to her care and ~~Brittany~~ cannot be returned to Vickie's care within a reasonable period of time.

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 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. 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).

Children should not be forced to endlessly await the maturity of their parents. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Evidence of a parent's past performance may be indicative of the quality of future care he or she is capable of providing. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

II. Iowa Code Section 232.116(1)(e)

Iowa Code section 232.116(1)(e) allows for a termination of parental rights where

- (1) the child is four years of age or older;
- (2) the child has been adjudicated a child in need of assistance;
- (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; and
- (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.

The requirement of Iowa Code section 232.116(e)(4) is met "when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance . . . are met." *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988).

Vickie alleges the State failed to prove, by clear and convincing evidence, Brittany cannot be returned to her home. She also claims she has remained sober for one year and has made attempts to continue contacts with Brittany.¹

At the time of the termination hearing, Vickie was incarcerated and tested positive for illegal substances. The past three years has illuminated Vickie's problems in dealing with her alcohol dependency and parenting skills. While Vickie maintains she has remained sober, she does not recognize her problem with the use of illegal drugs. Her testimony at the termination hearing indicated she was not asking the court to put Brittany back in her custody, but wished her to remain in long-term foster care. Each time Vickie appeared to be making strides toward reuniting with her daughter, she would become incarcerated, often for crimes involving the use of alcohol. Testimony indicated Vickie would like begin to reabuse alcohol or drugs.

The effects of Vickie's unstable and erratic life have shown on Brittany. She has had difficulties dealing with her mother's lapses in visitation due to Vickie's numerous hospitalizations and incarcerations. She has been present at times when Vickie was **extremely** intoxicated. Testimony indicated Brittany's behavior improved

¹ Vickie also contends the services provided her were conflicting, she had difficulties reaching appointments, and often could not reach her last caseworker to ask questions. She claims the caseworker did not work toward family reunification. We reject these arguments. A careful reading of the record indicated numerous attempts to accommodate Vickie over the past three years. Great efforts toward reunification were made by DHS workers, until Vickie's last incarceration and the Clinic's evaluation.

while she was in foster care and did not have contact with her mother. She has not been able to progress due to the lack of stability in her life.

We find clear and convincing evidence exists that Brittany cannot be returned to her mother as set forth in Iowa Code section 232.102. We agree with the district court Vickie's parental rights should be terminated pursuant to Iowa Code section 232.116(1)(e).

III. Iowa Code Section 232.116(1)(k)

Parental rights can be terminated under Iowa Code section 232.116(1)(k) where

- (1) the child has been adjudicated a child in need of assistance and custody has been transferred from the child's parents;
- (2) the parent has a severe, chronic, substance abuse problem, and presented a danger to self or others as evidenced by prior acts; and
- (3) there is clear and convincing evidence the parent's prognosis indicates the child will not be able to be returned to the parent's custody within a reasonable period of time considering the child's age and need for a permanent home.

Vickie contends she has been sober for nearly a year, her substance abuse problem no longer severe, and she does not present a danger to herself or her children.

Testimony indicated Vickie's prognosis for staying away from controlled substances or alcohol was poor. She has not maintained steady sobriety for the one year she claims, as she tested positive for marijuana and cocaine just prior to the termination hearing. She also admitted to using marijuana on several occasions.² She

² Vickie also stated to DHS workers she had smoked marijuana with her son, but later called DHS and stated she had been smoking with her son's father.

has not been able to control her alcohol problem, despite her numerous in-patient and out-patient treatments. We agree with the district court Vickie's substance abuse problem "presents a danger to others through a risk of unpredictable impulsive acts and, with respect to children, through severe risk of neglect."

We find evidence proves Vickie has a chronic, severe substance abuse problem and presents a danger to herself and others. Clear and convincing evidence also exists that Vickie's prognosis is such that Brittany will not be able to be returned to her within a reasonable period of time. We find the district court properly terminated Vickie's parental rights to Brittany pursuant to Iowa Code section 232.116(1)(k).

AFFIRMED.