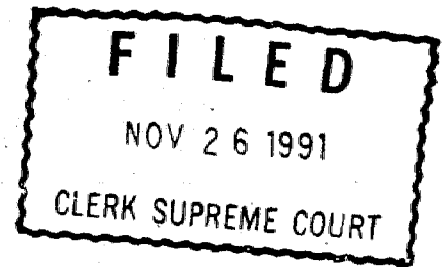


IN THE COURT OF APPEALS OF IOWA

No. 1-245 / 91-48



357

IN THE INTEREST OF T.M.K., A Child,
D.K.T.S., Mother,
Appellant.

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

The mother appeals the juvenile court's termination of
her parental rights. **AFFIRMED.**

Michael Fay, Cedar Rapids, for appellant mother.

Bonnie J. Campbell, Attorney General; Valencia McCown,
John M. Parmeter, and Judy Sheirbon, Assistant Attorneys
General, for appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

HABHAB, J.

The child in question is a girl born in July 1987. Her parents have never been married to each other. Both natural parents have had only limited roles in the child's life.

The child was adjudicated to be a child in need of assistance in March 1988, when she was less than a year old. Her four older half-siblings were also adjudicated to be children in need of assistance at about the same time. The conditions prompting these adjudications included extremely poor sanitation in the mother's home, neglect of the children's needs, and the mother's extremely unstable lifestyle and frequent extended absences.

The child was initially placed with her natural father. However, after a few months he acknowledged his inability to care for her. She was then placed in foster care.

During the child's foster care the mother has spent two substantial periods in prison. For nearly six months she was also a transient fugitive. During that time she lived with her five other children and a male companion and traveled to several states and Canada. During these travels, the male companion beat some of the children, abused alcohol and drugs, and committed thefts to support the "family." The mother would then dispose of the stolen property to obtain necessary items.

T.M.K. and four of her older siblings came to the attention of the Iowa Department of Human Services in February 1988 as the result of a child abuse referral. Their mother, D.S., had left them in the care of her then-husband, R.T. Upon visiting the home in February, the DHS worker found the home and the children to be filthy and urine-soaked. The children appeared to be neglected, and the home was cluttered with dirty dishes and clothes. At that time R.T. indicated he was facing imprisonment within thirty to forty-five days. Referrals were made to get the home cleaned, see to the physical and educational needs of the children, and try to find a caretaker.

T.M.K.'s father was eventually located, and he agreed to move into the home and care for the children. T.M.K. and the other children were stipulated to be in need of assistance in March 1988. Neither R.T. nor the children's father knew the location of the mother, but thought she was somewhere in Minnesota. The court placed the children in the father's care.

From February 1988 through November 1988, D.S. made no attempt to contact her children. In July, the father revealed she was in California. Apparently D.S. was attempting to avoid prosecution for false use of a financial instrument. T.M.K.'s father was supposed to be caring for her during this period. However, it was learned in September 1988 T.M.K.'s day care provider, D.G., had been caring for her twenty-four hours a day for the last

seven months. The father eventually admitted he was unable to care for T.M.K.

In March 1989, the day care provider was granted physical custody of T.M.K. as her home and parenting abilities were determined to be appropriate. T.M.K. was bonded to her and her live-in boyfriend. In February 1989, D.S. was located at the Mitchellville women's correctional facility. When D.S. was released in March, she went to a residential substance abuse facility until April 7, 1989, as she had an alcohol and cocaine abuse problem. She then moved in with her parents as she was pregnant with her sixth child. Visitation with T.M.K. was begun on April 27, 1989. In June, visits included all five children.

In the next months, D.S. made slow progress as she moved several times and failed to notify service providers. T.M.K. was returned to her mother's care for a trial home placement at the homemaker's and the worker's recommendation.

At this time, D.S. was living with a man, J.S. J.S. had previously been incarcerated. He also had a substance abuse problem. They were to have joint substance abuse counseling and cooperate with in-home services. According to the reunification plan, the rest of the children were returned to D.S.'s care on December 19, 1989.

When T.M.K. was first returned to D.S.'s care, the homemaker reported T.M.K. was intentionally defecating on the floor. In January, the homemaker was concerned D.S.

felt T.M.K. hated her as T.M.K. was exhibiting self-abusive behaviors such as picking her lip and pulling her hair. It was apparent D.S. did not know how to deal with the problem.

In February, T.M.K. was present in the home for only one of the four homemaker visits. D.S. appeared to be ignoring T.M.K. D.S. did not include T.M.K. in the family activities. T.M.K. spent approximately 80% of her time with D.S.'s sister. The homemaker indicated weekend respites were all right, but on February 27th she could not locate the family.

On February 27 and 28 and March 1, the caseworker made repeated attempts to try and reach D.S. The worker discovered the children had not been in school since February 26. They had not been home for a homemaker visit. D.S.'s parole officer did not know where D.S. was.

The worker contacted D.S.'s sister on March 6. The worker learned T.M.K. had been left with the sister since March 1, as D.S. had problems with her. D.S. had left with the other children. T.M.K. was removed from the sister's home on March 20. This removal occurred because a family member reported that D.S. had plans to pick up T.M.K. the upcoming weekend and leave town. A protective service alert was issued to all states.

No one located or heard from D.S., her boyfriend, or the six other children until August 1990. At that time, D.S. and J.S. were arrested in Onawa, Iowa. When located,

the other children were placed in foster care. They remained in foster care at the time of the termination hearing on November 28, 1990.

T.M.K. had a visit with D.S. on October 22, 1990, along with the other children at the Oakdale correctional facility. D.S. gave birth to a seventh child on November 13, 1990. This baby was also placed in foster care.

At the time of the termination hearing, D.S. was about to be moved to the Mitchellville facility as she had been convicted of a third-degree theft charge and her parole was revoked. She was given a two-year sentence to run concurrently with her five-year parole revocation sentence.

When asked why they fled with the children, J.S. said they wanted to avoid placing the children in foster care. Also, he had to leave because he violated his probation. At the time of the hearing, J.S. was also incarcerated. He was serving a five-year sentence for second-degree theft which was to run concurrently with his previous suspended sentence. J.S. and D.S. still indicate they plan to reunite following their release from prison.

The children were asked about what occurred during their six-month absence. The boys stated they had gone to Canada to try to get citizenship. They failed in this endeavor, so they went to Texas for false I.D.'s. They moved around through several states, including Iowa, living in a camping trailer. J.S. would steal food, money, or

other items. D.S. would exchange these items for necessities.

The children were very angry and afraid of J.S. He told them they would be put in detention homes if caught. They indicated J.S. was using a lot of drugs and alcohol. They related an incident about turning over some hypodermic needles to a park ranger. The children also stated J.S. physically beat them, especially one of the older boys. They also described how J.S. had spanked T.M.K. with a belt. She was made to sleep on the floor because she wet the bed. Prior to their long absence, the children remembered how J.S. had shot a pistol through the door near where T.M.K. slept. He threatened to kill himself by putting the gun in his mouth.

D.S. testified J.S. did abuse one of the boys during this six-month absence. She stated J.S. was drinking and stealing. She acknowledges none of the children had attended school during this period. She denied they went to Canada to establish residency, but indicated they went up there to go ice fishing.

D.S. admitted although her family was together in February 1989, she chose to go with J.S. and leave T.M.K. She chose this rather than remaining in the home with all the children and letting J.S. leave. She termed her six-month absence an "extended vacation." The first few times the homemaker talked to D.S., she did not even ask about T.M.K.

On September 12, 1990, the State filed the present petition to terminate the parental rights of both the mother and the father to T.M.K. After a hearing, the juvenile court did terminate the parental rights of both natural parents. The juvenile court relied on Iowa Code section 232.116(1)(g). That subsection permits termination if a child cannot safely be returned to the parents' home, following a CINA adjudication and extended foster care.

The mother has appealed from the termination order. The father has not appealed.

The mother challenges the sufficiency of the evidence to establish that the child cannot safely be returned to her care once she is released from her current prison term. She also challenges the sufficiency of the evidence establishing termination is in the child's best interests.

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 1987).

In the present case, the mother's parental rights to T.M.K. were terminated pursuant to Iowa Code section 232.116(1)(g) (1989 Supp.), which allows for termination when the court finds that all of the following have occurred:

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

D.S. appears to concede all of these elements are met in this case. However, she contends T.M.K. should have remained in foster care until D.S. is released from prison. She argues services should then be reinstated in

hopes reunification with G.S. and the other children was possible.

Our review of the pertinent statutory and case law indicates the juvenile court properly considered D.S.'s unavailability as a parent due to her incarceration, as well as T.M.K.'s adoptability and need for permanency. See Iowa Code § 232.116(2) (1989 Supp.); In Interest of J.V., 464 N.W.2d 887 (Iowa App. 1990); In Interest of S.J., 451 N.W.2d 827, 832-33 (Iowa 1990). Our statutory scheme for terminating parental rights has been carefully crafted as a legislative response to federal court decisions. It reflects a balancing of the State's compelling interest to protect the welfare of young children and the fundamental right to the integrity of the family. See Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987)(citing Alsager v. District Court, 406 F. Supp. 10 (S.D. Iowa 1975), aff'd 545 F.2d 1137 (8th Cir. 1976)).

The legislature has determined the interval for which patience with parents may last. See Iowa Code § 232.116(1)(g) (six months). This period is reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children. In Interest of R.J., 436 N.W.2d at 636 (citing In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987)). T.M.K.'s future is not uncertain in the event of termination of parental rights as T.M.K. is young and very

adoptable. D.G., with whom T.M.K. is bonded, is willing to provide a permanent home for her. See generally, In Interest of S.J., 451 N.W.2d at 832-33.

T.M.K. has adjusted fairly well in her current foster care placement. She continues to have contact with her previous custodians, D.G. and her live-in boyfriend. There is evidence T.M.K. views them as her parents. T.M.K. has been harmed by the two times D.S. has deserted her. Her ability to bond is hampered and she does not trust adults. D.S. has consistently treated T.M.K. differently than her other children who seem to still be bonded with her despite the traumatic experiences. D.G. is willing to provide a permanent home for T.M.K., and the caseworker testified T.M.K. is an adoptable child who needs a permanent home soon rather than extended foster care.

The evidence indicates T.M.K. is not bonded with either her mother or her siblings. In fact, she refers to them as "those people at the farm." T.M.K. deserves a chance to form a healthy familial bond with persons who have been there for her in the past. The evidence indicates D.S. has learned nothing about putting her children's needs before her relationship with J.S.

Children deserve permanent homes and should not be made to suffer indefinitely in parentless limbo. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987).

We conclude by pointing out we have the gravest concern due to D.S.'s two previous prolonged absences from T.M.K.'s

life. Both absences took place while T.M.K. was very young. In fact, at the first absence, T.M.K. was less than a year old. These absences essentially amounted to temporary abandonment of the child. Apparently, D.S. reacts by running away when stresses mount to a certain point in her life.

T.M.K. should not be forced to endlessly await the maturity of her mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if the specified time has elapsed since the child was removed from the home and the parent still cannot take care of the child. See id. Evidence of the 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 at 745.

We determine the juvenile court correctly terminated the mother's parental rights to T.M.K. We affirm the trial court in full. Costs of this appeal taxed to the mother.

AFFIRMED.