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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.F. AND D.F., Children.	)	
	)	
L.F., Mother,	)	
Appellant,	)	25
	)	
R.F., Father,	)	8-398
Appellant.	)	88-122

Appeal from the Iowa District Court for Dubuque County (Juv. Nos. 103119 & 103120) - Charles H. Jacobs, Juvenile Referee.

The mother of two children, and the father of one of them, have filed separate appeals from the juvenile court orders terminating their parental rights. **AFFIRMED.**

Paula M. Stenlund of the Naughton Law Firm, Dubuque, for the appellant mother.

Dan A. McClean of Jenk, Jenk, Goen, McClean & Goodman, Dyersville, for the appellant father.

Mark Sullivan, Dubuque, for the children.

Mary Schumacher, Dubuque, for the maternal grandfather.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Jean Becker, Assistant County Attorney for the appellee State.

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

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OXBERGER, C.J.

There are two children who are the subject of this proceeding. The mother of two children and the father of one of them have filed separate appeals from the juvenile court orders terminating their parental rights. The two appeals have been consolidated. The mother challenges the sufficiency of the evidence to establish that the children cannot safely be returned to her custody. The father challenges the sufficiency of the evidence to establish that he abandoned his child, or that the termination of his rights is in the best interest of his child. The father also contends his termination was erroneous because the Department of Human Services had failed to consider him as a possible custodial parent. We affirm the termination of the parental rights of both parents.

Iowa Code section 232.116(1)(e) (1987) permits the juvenile court to terminate the parent-child relationship if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve of the last eighteen months, and there is clear and convincing evidence that the child will suffer harm specified in Iowa Code section 232.2(6) (1987) if returned to the parent. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985).

The types of harm specified in section 232.2(6) include the physical abuse or neglect of the child and the harm

caused by the parent's failure to exercise reasonable care in supervising the child. Proof of any one of the types of harm delineated in section 232.2(6) is sufficient to support termination. See In re K.L.C., 372 N.W.2d at 228.

Our review of proceedings to terminate a parent-child relationship is de novo. We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses the court has heard and observed first hand, but we are not bound by them. Our primary concern is the best interests of the child. We look to the child's long-range, as well as immediate, interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We consider what the future holds for the child if returned to his or her parents. Id. 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. Id. Our statutory termination provisions are preventative as well as remedial. Id. They are designed to prevent probable harm to a child. Id.

The State must prove the allegations of the petition to terminate by clear and convincing evidence. See Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982). This includes the requirement that before the court may terminate the parental rights there must be clear and convincing proof that the child will

suffer harm in a manner specified in section 232.2(6). See In re Chad, 318 N.W.2d 213, 219 (Iowa 1982). The child should not be forced to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). He or she need not endlessly await the maturity of his or her natural parent. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if enough time (twelve to eighteen months) has passed and the parent still cannot take care of the child. Id.

I.

The children in question are boys, D.F. and D.F. They were born in 1981 and 1984. They have the same mother but different fathers. In early 1985, D.F. and D.F. were living with their mother, L.F., in Florida. When L.F. found the demands of employment and child care to be too much to handle, she voluntarily placed the children with her father, the maternal grandfather. S.F., the grandfather, found the children to have significant health problems, including head lice and ear infections. L.F. went back to Florida.

L.F. returned to Iowa in July 1985 and tried to take D.F. and D.F. back. Due to the concerns over L.F.'s ability to take care of the children the Department of Human Services was contacted. The children remain in S.F.'s care pursuant to a temporary order. In September 1985 both children were adjudicated to be children in need of assistance. In a later dispositional order, the

children were placed in the home of their maternal grandfather, S.F., where they already resided, subject to supervision by the Department of Human Services. L.F. was directed to pursue individual mental health counseling, parent training, and generally attain a stable manner of living.

In late December 1985, it was discovered by L.F.'s social worker who was trying to locate her, that she had gone to Florida without contacting the department. This made implementation of a case plan impossible. L.F. returned to Iowa in May 1986. The department again attempted to implement a case plan. At this time it was discovered that L.F. was pregnant by K.P. L.F. planned to divorce R.F. and marry someone from Garber, Iowa.

On July 18, 1986, L.F. visited the boys for the first time since December 1985. Over the next three months following her return to Iowa, L.F. continued to see her children, although she missed a number of visits. L.F. did attend a mental health counseling session and began work on the systematic Training for Effective Parenting Program. However, due to L.F.'s frequent relocation, any progress on a case plan was frequently frustrated.

After September 1986, L.F. continued to live with various friends and relatives in northeast Iowa and Wisconsin. The department's worker was constantly searching for L.F. On October 7, 1986, L.F. gave birth to a daughter.

In March 1987, the Department of Human Services recommended terminating the parental rights of the mother of the two boys and the fathers of each of them. The department's recommendation of termination of L.F.'s parental rights was based on (1) L.F.'s inability or unwillingness to comply with the case plan, (2) the deteriorating relationship between the children and L.F., and (3) the developing behavioral problems displayed by the children, particularly the youngest.

On May 8, 1987, the State filed the termination petition. During the pendency of this action L.F. was given a "last chance" to demonstrate her potential as a parent. In August 1987, Dr. Thomas Anderegg, a licensed psychologist, evaluated L.F. and D.F. and D.F. Dr. Anderegg found L.F. to be of low average intelligence but able to follow directions. Her M.M.P.I. results indicated she had personality problems with tendencies of impulsivity, explosiveness, distrustfulness, and the formation of dependent relationships. Dr. Anderegg further observed an emotional bond between L.F. and her children but noted that she was unable to control them. It was the opinion of the doctor that L.F. could probably not be capable of parenting in this situation. He noted that the behavioral problems of the children required a parent who was able to handle the situation and provide limits for the children.

Dr. Anderegg also evaluated D.F. and D.F. He found D.F., the oldest boy, to be severely behaviorally disordered. This child was found to direct obscene comments to his mother and to have a fascination with sexually explicit material. Dr. Anderegg concluded the other child was at the risk of developing such a disorder. The doctor concluded these behavioral problems stemmed from a chaotic upbringing, a lack of appropriate discipline, contact with deviant adult role models and an overall lack of certainty about their future. It is true that the children's behavioral problems have developed while not in the presence of their mother. However, the record does not contain evidence that this disruptive behavior stems in whole or in part from actions on the part of the maternal grandfather.

Since February 1985, L.F.'s contact with the children has been sporadic. At the termination hearing, the department's worker testified since the department has been involved with the case, that of a possible 111 visits L.F. has only visited less than fifty percent of those times. The record reveals that this inconsistency and unreliability in visitation has been detrimental to the children and they have been unable to establish a meaningful relationship with their mother. The youngest child has been removed from his mother's care since seven months of age. Another result of this inconsistency in

visitation is that L.F. has been unable to acquire the necessary skills to adequately care for these children who suffer from behavioral disorders. The oldest boy has behavioral problems and requires special parenting and discipline. L.F. has demonstrated her inability to deal with D.F. in the disciplinary capacity.

The most troubling part of this case is that L.F. has demonstrated that she is unable to provide a stable home for her children. L.F. has not been able to establish a permanent residence in the two years the department has been involved with her. From September 1985 until late 1987, L.F. changed residences thirty-three times. Further, L.F. has demonstrated an unwillingness to accept and participate in services. These children can no longer wait for L.F. to change.

We find clear and convincing evidence that D.F. and D.F. cannot be returned to the custody of L.F., as L.F. has shown an inability to provide a stable home for the children as evidenced by her difficulty in forming lasting relationships, her inability to meet with the children's disciplinary needs, and her inability to curb her transitory lifestyle. We find that D.F.'s and D.F.'s best interests will be served by not returning them to L.F.

II.

R.F. is the father of the youngest boy, D.F., born in July 1984. R.F.'s parental rights were terminated on the

ground of abandonment pursuant to Iowa Code section 232.116(2) (1987). Section 232.116(2) provides the court may terminate parental rights if the court finds clear and convincing evidence that the child has been abandoned. Iowa Code § 232.2(1) (1987). Section 232.116(1) defines abandonment as:

> "Abandonment of a child" means the permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent to the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (1987).

Iowa case law has characterized the elements of abandonment as "a giving up of parental rights and responsibilities accompanied by an intent to forego them." In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Parental responsibilities include more than subjectively maintaining an interest in the child. Id.

R.F. and L.F. began living together in November 1983. They discovered that L.F. was pregnant in December 1983. In fact, R.F. was the one who took L.F. to the physician and was present when it was determined that L.F. was pregnant. R.F. had no doubt that he was the father of this child. L.F. gave R.F. no indication otherwise. In March 1984 the couple separated. L.F. moved to Florida and gave birth to D.F. in July 1984. R.F. was made aware of

the child's birth. D.F. has resided most of his life with his grandfather, S.F.

From the time that D.F. was returned to Iowa from Florida, R.F. has had sporadic contact with his son. R.F. testified he has visited the son as many as fifteen times. However, many of these occasions were incidental meetings of the two. R.F. also noted that he provided cash gifts to D.F. on a few occasions.

R.F. contends his visitation and attempt at establishing a relationship with D.F. was hampered by S.F. Further, R.F. contends the reason he did not assert his rights as a parent is because he had doubts as to whether he was actually the father of D.F. until the results of the 1988 blood test.

R.F. has been employed but does not sport a record of consistent employment. From 1985 until 1987 he cohabited with different women. He conceded in his testimony that on occasion he has assaulted the women with whom he has lived.

The evidence indicates at the time in which L.F. discovered that she was pregnant with D.F., R.F. had every reason to believe he was D.F.'s father. We find R.F.'s contention that he was not aware D.F. was his son until the 1988 blood test to be hard to believe.

In the time between February 1985, when D.F. was returned to Iowa, and the termination hearing, R.F. made little or no effort to establish a father-son

relationship. He had very little contact with D.F. Even when he did visit, the record indicates his visits seldom lasted more than a few minutes to half an hour. Further, R.F. provides no support for his son nor does he make an attempt to acknowledge D.F. on his birthday or holidays.

There is not presently a father-son relationship between R.F. and D.F. R.F. is requesting the opportunity to create such a relationship. However, we find the record to support the termination of R.F.'s parental rights based on abandonment. We find R.F. has given up his parental responsibilities as evidenced by his inaction. We conclude D.F.'s best interest would be best served by placing D.F. in a home where there is stability and consistency. R.F.'s lack of interest in and contact with his son, his lack of consistent employment, as well as evidence of R.F.'s physically abusive behavior toward women indicate it may take some time for R.F. and D.F. to establish a relationship. D.F. should not be made to wait for such an occasion.

We affirm the juvenile court's termination of the parental rights of L.F. and R.F.

AFFIRMED.