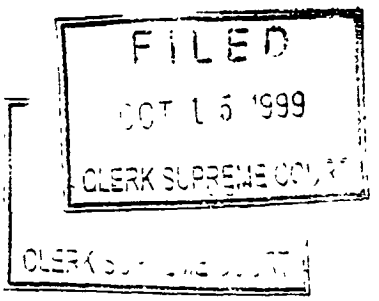
IN THE COURT OF APPEALS OF IOWA

No. 1999-240 (9-464) / 99-502
Filed October 15, 1999



IN THE INTEREST OF Z.L., S.R., and M.R., Minor Children,

N.R., Mother,

Appellant.

Appeal from the Iowa District Court for Muscatine County, James A. Weaver, District Associate Judge.

A mother appeals from juvenile court order terminating her parental rights.

AFFIRMED.

Esther J. Dean, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Teresa Stoeckel, Assistant County Attorney, for appellee-State.

William F. Creasey, Muscatine, guardian ad litem for minor children.

Considered by Sackett, C.J., Vogel, J., and Peterson, S.J.*

***Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).**

PETERSON, S.J.

The mother, Nannetta, appeals the juvenile court order terminating her parental rights to her three children. She contends the trial court erred in finding she has not maintained significant and meaningful contact with the children in the previous six months and the children could not be returned to her custody. She also claims the State did not make reasonable efforts to maintain family unity. The fathers' parental rights also were terminated, but are not involved in this appeal. We affirm the juvenile court.

Background. Zackhery was born in 1992, to Nannetta and Salvador. Salvador's whereabouts are unknown. Nannetta and Rodolfo married in 1993. They are the parents of Selena, born in 1995, and Miranda, born in 1997. A serious car accident in July 1997, left Rodolfo in a coma, Zackhery with a fractured pelvis, and Selena with a broken leg. Rodolfo has been returned to his family in Mexico, where he remains in a vegetative state.

After Rodolfo's accident, Nannetta began drinking heavily and left the children with their grandparents for days at a time, without informing them of her whereabouts. At the request of the paternal grandmother, the court issued an ex parte removal order in August 1997, placing the children with Nannetta's mother. After an adjudicatory and dispositional hearing, the court adjudicated the children in need of assistance and placed the children in the custody of DHS for foster placement. Because of problems between Nannetta and the foster family, the children were

placed in a second foster home in February 1998. After a dispositional hearing in April 1998, DHS suspended Nannetta's visits with the children in an effort to motivate Nannetta to change her behavior, complete substance abuse treatment, and begin complying with the case permanency plan. The court approved the suspension of visitation. The court also determined the services called for in the case permanency plan "constitute a reasonable effort to return the children to the home of their mother" but found "the impediment to returning the children home is the unwillingness of the mother to use those services for the benefit of her children."

After a dispositional review hearing in October 1998, the court found Nannetta had not attempted to alleviate the conditions which led to the removal and CINA adjudication. The court found a minimum effort would include participation in substance abuse treatment, mental health treatment, and family-centered services. Nannetta had attempted substance abuse treatment several times without success. She refused to participate in family-centered services. After visitation had been suspended for six months, the court found, "[i]f the lack of contact with the children cannot motivate her to use services, it is unlikely the potential for termination of her parental rights will alter that attitude."

One month after the hearing, Nannetta entered residential substance abuse treatment. She completed the program and her prognosis upon release was "guarded." After completing the residential treatment, Nannetta moved into a halfway program in December 1998, but was discharged in January 1999 for theft.

Termination proceeding. The State filed the petition to terminate parental rights on January 15, 1999. By that time Nannetta had not seen the children for over nine months. She did not have a job or housing. At the hearing, Nannetta claimed she had made progress and asked for more time. The court terminated Nannetta's parental rights to Zackhery under Iowa Code sections 232.116(1)(d) and (e). It terminated her parental rights to Selena and Miranda under sections 232.116(1)(d) and (g). The court found Nannetta had been living a chaotic life, preventing her from having a parental relationship with her children, and that she admitted at the termination hearing she was not yet prepared to parent the children at home. Nannetta appeals.

Scope of review. We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

Discussion. First, Nannetta claims the State did not prove the elements of section 232.116(1)(d)(3).[1] She admits she did not maintain significant and

---

[1] This section provides,

There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not

meaningful contact with the children, but blames DHS for removing all incentive for her to complete substance and mental health treatment by withholding visitation. She also argues she was never given the opportunity to resume care of her children because she had no contact with them. Although DHS suspended visitation after six months of complete non-compliance with the case plan, Nannetta never made a genuine effort to complete the responsibilities of the plan. She could have reestablished visitation and communication with her children by compliance, but did not. At the time of the termination there had been no contact with the children for about a year -- twice the statutorily required time. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *L.L.*, 459 N.W.2d at 495. We find clear and convincing evidence supports termination under section 232.116(1)(d).

---

limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Iowa Code § 232.116(1)(d)(3).

Second, Nannetta claims the State did not prove the elements of subsection (4) of sections 232.116(1)(e)[2] and (g),[3] that the children could not be returned to her custody as provided in section 232.102. She argues section 232.102 requires a finding the child could not be protected from physical abuse or from some adjudicatory harm. She asserts there never was any allegation of physical abuse and she "had not subjected the children to any adjudicatory harm at the time of their removal from her." We note that Nannetta admitted at the termination hearing she was not ready for the children to be returned to her at that time. We find the children would be at risk of adjudicatory harm as set forth in Iowa Code sections 232.2(6)(b) and (c)(2) if returned to her care. Nannetta's past performance raises doubts she could be successful in

---

[2] The pertinent language of this section provides,

> (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.
>
> (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.

[3] The pertinent portions of this section provide,

> **(3) The child has been removed from the physical custody of the child's parents 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.**

becoming able to parent her children. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Under the statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *Dameron*, 306 N.W.2d at 745.

Iowa Code sections 232.116(1)(e) and (g) differ in the age of the child and the length of time the child must be out of the home before termination. The children had been out of the home for eighteen months by the time of the termination, exceeding the requirements of both sections. Nannetta testified at the hearing she wanted "another extension to prove that I'm going to follow through *this time* and do what I'm supposed to do." (Emphasis added). When asked if she could change and become able to parent her children, she responded, "I think I could. I mean, it's not going to happen overnight." Because of the time the children have been out of Nannetta's care, the situation is urgent. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). We find clear and convincing evidence supporting termination under Iowa Code sections 232.116(1)(e) and (g).

Finally, Nannetta claims the State did not make any efforts to maintain the children in the home or to reunify the children with her. She claims, "[o]nce the contact between a mother and child is broken, the end result can be predicted: termination." In April 1998 the court found the efforts made to help Nannetta and her children were reasonable. She did not appeal that decision. The record does not

reveal she ever challenged the case permanency plan. She has not preserved error on the issue of reasonable efforts and we do not address it.

For the reasons set forth, we affirm the termination of Nannetta's parental rights to Zackhery, Selena, and Miranda.

AFFIRMED.

Vogel, J., concurs; Sackett, C.J., specially concurs without opinion.

SACKETT, C.J. (concurring specially)

I concur specially without opinion.