FILED
AUG 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-307 / 89-531

In the Interest of

J.M. and K.M., Minor Children.

K.M., Mother-Appellant.

M.M., Father-Appellant.

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Appeal from the Iowa District (Juvenile) Court for Mahaska County, Gene W. Glenn, Juvenile Referee.

The parents of two children appeal the juvenile court order terminating their parental rights. **AFFIRMED.**

David D. Dixon of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for mother-appellant.

Allen A. Anderson of Spayde, White & Anderson, Oskaloosa, for father-appellant.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for State of Iowa.

Randy S. DeGeest, Oskaloosa, guardian ad litem for the minor children.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ., but decided en banc.

HAYDEN, J.

The children involved in this termination case are girls born in October 1984 and January 1986. The parents were married and subsequently divorced. They resumed living together and plan to remarry. The juvenile court terminated the parental rights of the mother and father, both of whom appealed from the termination order.

> Familiar principles guide our consideration of this appeal. Our review, of course, is de novo. . . . Thus, we examine the facts as well as the law and adjudicate rights anew on the record before us, mindful of our obligation to accord weight to the juvenile judge's factual findings, especially when considering the credibility of witnesses.
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> [C]entral to a determination of this nature are the best interests of the child. In this connection we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely 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 that parent is capable of providing.
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> The grounds for termination of parental rights must be shown by clear and convincing proof. Iowa Code § 232.116(5)(c).

In Interest of K.F., 437 N.W.2d 559, 560 (Iowa 1989) (citations omitted).

The family first became involved with the juvenile court in April 1986. The mother's inability to control her temper had resulted in "detrimental" behavior towards the

children. Because of the threat of future harm, the children were adjudicated children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (1985). The mother retained legal custody of the girls under protective supervision of the Mahaska County Department of Human Services (Department). The court ordered her to undergo an out-patient psychiatric evaluation. At the June 1986 dispositional hearing, the court found the children remained children in need of assistance. The evaluation had concluded the mother suffered from an adjustment disorder with a depressed mood but she was basically a nonviolent person who loved her children. The mental health experts stated the chances of her failing to control her temper were probably no better or worse than any single mother. The court ordered the family to participate in family therapy.

In early January 1987, the children were removed from the mother's home because she was committed to a mental health institution and their father was in jail. The girls were placed in foster care with the mother's sister and brother-in-law. At the dispositional hearing later that month, the court limited the mother's visits with the girls to those under the supervision of the Department or its designee.

The court ordered the father to have no contact with his daughters. He had a history of alcoholism. Physical

violence had occurred between the parents, sometimes in the presence of the children. The father was to enter, and complete, a long-term substance abuse program to be followed by further treatment and counseling.

In August 1987, the court granted legal custody to the sister and brother-in-law. The mother continued to have supervised visitation rights and was ordered to participate in counseling.

By this time, the father and mother had resumed living together after his release from jail. Since then, he was charged with false imprisonment for handcuffing the girls' mother. He was placed on probation, conditioned on participation in an in-patient substance abuse treatment program. He was subsequently discharged for drinking. Then he was ordered to participate in an out-patient program. He discontinued attendance in violation of probation.

At the February 1988 review hearing, the court found the children were well cared for and it was in their best interests to remain with their aunt and uncle.

In August 1988, the court ordered the Department to petition for termination of parental rights. The mother stayed with her sister and daughters for a few weeks after this hearing. On September 3, she and the father left the state. The father left the mental health facility without permission,again in violation of probation. They lived in

Nevada and Arizona until March when they returned for the hearing. Although the mother mailed some cards to her daughters, neither her sister nor the Department knew how to reach them for the six months they were out of the state.

After a hearing, the juvenile court terminated the parental rights of both parents pursuant to Iowa Code section 232.116(1)(e) (1989).

Iowa Code section 232.116(1)(e) authorizes the court to terminate parental rights upon a finding all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.
> (3) 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.

I. The first issue the parents raise on appeal is the failure of the juvenile referee to recuse himself from presiding at the termination hearing.

Gene Glenn, the juvenile referee, presided over all the CHINA (children in need of assistance) proceedings. These included the adjudicatory hearing of April 1986 in which he declared the girls to be children in need of assistance; the dispositional hearing of June 1986 in which he found the girls continued to be within the purview of the CHINA statute; the temporary removal hearing of January 1987 in

which the girls were temporarily placed with their aunt and uncle; the change of disposition hearing of January 1987 in which Referee Glenn found the children could not remain in their parents' home and be protected against harm; and the August 1988 hearing in which he found the evidence failed to establish by a preponderance the children could be returned safely to their parents' home, either now or in the foreseeable future, and thus, it was in the children's best interests to institute termination proceedings. Appellants maintain when the same judicial officer, who directed the Department to institute a termination proceeding, presides over that termination hearing, the parents are deprived of a fair and impartial trier of fact as required by due process. Appellants ask us to overrule the trial court's decision to terminate their parental rights.

We decline to do so because the juvenile referee's actions did not result in prejudice. The facts of this case support the decision to terminate the parental rights of appellants. These young girls have been in the custody of their aunt and uncle since January of 1987. It is clearly not in the children's best interests to hold them in a state of limbo any longer. They are entitled to stability and arrangements of a permanent nature.

We express our concern as members of the bar and the judiciary that we avoid even the appearance of impropriety. We must be vigilant in our efforts to see ourselves as the public does. Even if a judge is able to approach a termination proceeding with a fresh, unbiased eye after presiding over proceedings which concluded the termination should occur, it should be avoided. There is not a more intrusive, intimate or irrevocable state action than termination of parental rights. A judge is well advised to exercise extreme discretion in such a situation and decline to preside in both the CHINA proceedings, and later, over a termination hearing that he or she has directed be instituted.

II. The appellants also maintain the termination should be reversed pursuant to Iowa Code section 232.116(3)(c) (1989). This section allows the court to avoid termination if there is clear and convincing evidence the termination would be detrimental because of the closeness of the parent-child relationship.

As we stated at the beginning of this opinion, in determining the central issue in a termination proceeding--the best interests of the child--we look to the future as well as the present. In the Interest of K.F., 437 N.W.2d at 560. We must predict, from the parents' past behavior, what they will be capable of providing in the future. Id.

Past behavior indicates a dependent relationship between the mother and father. The father is an alcoholic who has a pattern of staying off liquor for awhile and then finally, drinking again. When this happens, he has physically assaulted the mother, sometimes in front of the children. Although the father has been under court order to participate in substance abuse programs, he has repeatedly walked out of such facilities, in violation of probation.

Neither parent has been able to sustain attendance in counseling sessions. They left the state for six months without providing their daughters' foster parents with their address or telephone number. They have accomplished little toward rectifying the behavior which necessitated the proceedings in the first place. Unfortunately, the parents' behavior does not indicate their future care will be any different than their past care.

AFFIRMED.