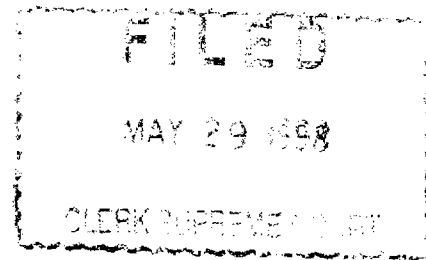


IN THE COURT OF APPEALS OF IOWA

No. 8-239 / 97-1846



IN THE INTEREST OF R.L., Jr.,
Minor Child,

K.H., a/k/a K.S., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

The mother appeals the juvenile court order terminating her parental rights.

AFFIRMED.

Eric Borseth of Borseth and Genest Law Office, Pleasant Hill, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, John Sarcone, County Attorney, and Jaki Livingston, Assistant County Attorney, for appellee-State.

Kimberly Ayotte of the Youth Law Center, Des Moines, guardian ad litem for minor child.

Considered by Cady, C.J., and Huitink and Vogel, JJ.

VOGEL, J.

The mother, Kelly, appeals the juvenile court order terminating her parental rights. She asserts the State failed to provide clear and convincing evidence her son cannot be returned to her care, all reasonable efforts for reunification were exhausted, and termination was in his best interests. In our de novo review, we affirm the decision of the juvenile court.

Ricky was born in October 1992 to Kelly and Richard (Rick). In July 1993, the court adjudicated Ricky in need of assistance after his removal for severe trauma or what appeared to be shaken baby syndrome, with Kelly identified as the perpetrator. Ricky soon was placed in the temporary custody of his maternal grandmother. Kelly and Rick were granted visitation and ordered to complete a parenting evaluation and other services.

In May 1994, Kelly and Rick regained custody of Ricky. In June 1995, Ricky was removed from his parents' custody again. There were instances of domestic violence between Kelly and Rick, and Kelly had tested positive for methamphetamine use. All parties stipulated to Ricky's removal on June 9, 1995, and he was placed with his paternal grandparents, Mary and Richard. Ricky has remained with his paternal grandparents since that time. Kelly and Rick were granted visitation after submitting to drug screens.

Kelly provided the necessary drug screens and exercised visitation until the end of February 1996. In March 1996 Kelly agreed to give temporary guardianship to Ricky's paternal grandparents; however, the guardianship proceeding never took place. Kelly continued to visit Ricky until May 1996. In June 1996, Kelly moved to Missouri to work in a nursing home. In October 1996, Kelly filed a motion for visitation. Sometime in December 1996, Kelly returned to Iowa, but her caseworker did not know of her return until February 1997. On December 13, 1996, the State filed a petition for termination of parental rights. In March 1997, Kelly saw Ricky for the first time in almost eleven months.

The termination hearing commenced in April 1997. At the time, Ricky had been in his grandparents' custody for almost two years. He had emotional and behavioral problems and was in therapy with Linda Skeers. His cognitive abilities functioned in the low-average to average range. Evidence was presented that Kelly's inconsistent visitation and telephone calls caused Ricky to have emotional outbursts. Skeers attributed many of Ricky's behavioral and emotional problems to Kelly's failure to assume a parental role.

Kelly testified she never intended to give up her rights to Ricky, and she had obtained steady employment, changed her life, and wanted to care for Ricky. She believed she could slowly be worked back into Ricky's life with the ultimate goal of reunification. Rick was incarcerated and consented to the termination of his parental

rights. He believed Ricky should remain with Mary and Richard. Mary and Richard expressed interest in adopting Ricky.

The court terminated Kelly's parental rights pursuant to Iowa Code section 232.116(1)(e) (1997). It determined Kelly had not visited Ricky on a regular basis, she had previously told Mary and Richard to raise Ricky, her interest in Ricky was sporadic and inconsistent, and she had not demonstrated she was capable of parenting him at this time. The court also concluded termination was in Ricky's best interests.

We review proceedings to terminate parental rights *de novo*—we may review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Weight is accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses, but they are not binding. *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).

The primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. The court considers what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at

489; *Dameron*, 306 N.W.2d at 743; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *Id.*

Kelly argues she now has a home and a job, has always provided clean drug screens, and has removed any possible risks to Ricky from a paramour. She also believes termination is not in Ricky's best interest. The State responds Kelly has moved from job to job and from residence to residence. The State also contends Kelly remains at risk of entering abusive relationships, so Ricky cannot safely be returned to her.

From our review of the record, we do not find Kelly's life to be stable. She testified that since her return to Des Moines in December 1996, she lived in three different residences in Des Moines, and since June 1996, she had lived in five different residences between Iowa and Missouri. She has been unable to maintain steady employment. The instability in her life has caused her to lose public assistance benefits. Her situation is not appropriate for returning Ricky to her care.

The legislature has crafted a statutory framework for State intercession into the parent-child relationship while protecting wherever possible the integrity of the family unit." *I.L.G.R.*, 433 N.W.2d at 681. 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

743. "So the statutory presumption that a child's best interest will be served by leaving the child with the child's parent is not conclusive." *L.L.*, 459 N.W.2d at 489. The requirement of Iowa Code section 232.116(1)(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 under section 232.2(6) exist. *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988); *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277.

Kelly knew the requirements of the case permanency plan having received liberal visitation as a result of her prior compliance. Yet she did not have face-to-face visits with Ricky from March 1966 until February 1997. Kelly failed to follow the recommendations of the Department of Human Services which would have allowed her to have visits with Ricky. She voluntarily left Iowa and now complains the case plan requirements were too onerous for her fulfill and other services should have been provided. However, she made no requests for services once she returned to Iowa in December 1966. In fact, her caseworker did not know Kelly had returned to Iowa until February 1997.

Ricky has exhibited symptoms of fear his mother cannot or will not be able to keep him safe. During many of the phone calls between Ricky and Kelly, Ricky would

end the call after only a short period of time. Ricky often displayed heightened aggressive behavior after these calls. Kelly is not ready to provide for Ricky's needs at this time, but wants him to be gradually reintegrated into her life.

The legislature has determined the interval for which patience with parents may last. "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989).

At one time, Kelly agreed Ricky should be raised by Mary and Richard, his paternal grandparents, who wish to adopt Ricky and have provided a permanent, secure home for him since his placement with them. Ricky has developed strong bonds with them. He has developed such a bond with Mary that he spontaneously began to refer to her as his mother and has continued to do so. Mary and Richard have been consistent in providing for Ricky's health and welfare, meeting Ricky's emotional and psychological needs and providing Ricky with a safe and stable home.

In contrast, Kelly moved out of Iowa at a time when she should have been seeking increased visits with Ricky in an effort to be reunited with him. Kelly has not demonstrated she is capable of parenting Ricky or resuming his care at this time. Although Kelly has at times demonstrated an interest in having Ricky returned to her, that interest has been inconsistent and sporadic. In fact, Kelly testified she is not capable of resuming Ricky's care and custody at this time. Ricky deserves stability

and safe, responsible care. The time for Kelly to show she can provide that has expired.

AFFIRMED