

IN THE COURT OF APPEALS OF IOWA

No. 9-418 / 89-532

FILED

OCT 05 1989

CLERK SUPREME COURT

IN THE INTEREST OF A.D.M. and H.M., Minor Children.

M.M., Mother,

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Appellant.

Appeal from the Iowa District Court for Clay County,
Mary L. McCollum, Juvenile Referee.

The mother of two minor children appeals from an order
terminating her parental rights. **AFFIRMED.**

Donald J. Hemphill, Spencer, for the appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Charles K. Phillips, Assistant
Attorney General; for the appellee State.

Nancy L. Whittenburg, Spencer, for the appellee
children.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.
Sackett, J., takes no part.

HAYDEN, J.

The two children subject to this appeal are girls ages five years and three years. They have a common mother, appellant M.M. They have different fathers. The mother has never been married to either father. Both children's fathers' rights were terminated along with their mother's. Neither father appeals. M.M., their mother, appeals. We affirm.

In terminating M.M.'s parental rights, the juvenile court referee found the children had been adjudicated children in need of assistance (CHINA) on July 18, 1986. The children were placed in temporary foster care at that time. On August 23, 1986, their custody was transferred to the Iowa Department of Human Services (DHS) for foster home care pursuant to Iowa Code section 232.102. The juvenile court referee also found beyond a reasonable doubt these children could not be returned to the custody of their parents pursuant to Iowa Code section 232.102.

The referee found M.M. would not be able to care for the basic needs of these children if they were returned to her care. They would continue to be children in need of assistance and at high risk for neglect and for abuse, particularly emotional. The referee specifically found if the children were returned to M.M., they would remain children in need of assistance pursuant to three subsections of Iowa Code section 232.2(6)(b). The

applicable sections defined a child in need of assistance as an unmarried child:

b. Whose parent, guardian or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

(2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

We first address a preliminary matter. M.M. asserts the juvenile court referee failed to take judicial notice of the CHINA proceedings and no DHS reports, assessments, or case plans were offered or introduced into evidence. It is true the juvenile referee did not take judicial notice of the above procedures in this proceeding. We do not know whether the juvenile court referee took them into consideration. However, we find no reversible error. Our review is de novo, and we arrive at the same result as did the juvenile court referee, without resort to the CHINA proceedings. See In Interest of Adkins, 298 N.W.2d 273, 278 (Iowa 1980).

In reviewing termination proceedings, we are guided by certain well settled principles:

Appellate review of the proceedings to terminate a parent child relationship is de novo; thus "it is our duty to review the facts as well as the

law and adjudicate rights anew on those propositions properly preserved and presented to us." We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings.

Central 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 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.

In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). It has also been recognized our statutory termination provisions are preventative as well as remedial. They are designed "to prevent probable harm to a child and do not require delay until after harm has occurred." In re A.M.S., 419 N.W.2d 723, 726 (Iowa 1988).

M.M. contends the State failed to prove a termination of parental rights was either required or permitted under Iowa Code section 232.116(5). We recite this subsection as follows: "There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation." In support of her contention she alleges the children's long period of foster care was not entirely attributable to her, but partially caused by DHS, constraints imposed by the "system," and other factors not within her control. She cites the fact during the time she has attempted to regain custody of her children she has had

an income of approximately \$370 per month. She claims this is insufficient and DHS failed to provide her significant financial aid to help her in providing for the children.

We turn to the transcript of evidence and testimony of the termination hearing. Maureen Haisman, a DHS social worker; Char Nissen, the psychiatric social worker for Psychiatrist Dr. Paul Anderson; Pat Swanson, a foster parent; Kay Hagedorn, a child protective service investigator for the DHS testified for the State. M.M. and M.M.'s mother testified in her behalf.

This record discloses both A.D.M. and H.M. were adjudged children in need of assistance on July 8, 1986. A.D.M. was one and one-half years old and H.M. was four months old at that time. They were placed in foster care then and have been in foster care ever since, or for thirty months at the time of the termination hearing. During this time, extensive services have been provided M.M. by Lutheran Social Services, DHS, and through Dr. Paul Anderson, a Spencer, Iowa, psychiatrist. M.M. consistently failed to follow through with participation in these services. These services were provided her to help her and to improve her parenting skills and ability to care for her daughters. She could not be located by her care workers. Her living arrangements were nomadic and unstable. Her DHS caseworker testified to nine of her moves and the Lutheran Social Services worker testified to knowing about five of her different residences in one month.

When the oldest child first arrived at the foster home, her diet primarily consisted of junk food and sweets. She was one and one-half years old then. When the children visited M.M. they were returned to the foster parents in dirty, urine-soaked clothing. Following these visits they would regress in their social and personal skills, such as potty training, for several days. The foster mother had found A.D.M. clad only in a shirt and eating from a box of cereal. A.D.M. had taken off her pants because they were urine-soaked. M.M. was asleep on the floor and oblivious to A.D.M.'s plight. When A.D.M. was first taken from M.M., she had large sores on her head. A doctor diagnosed she was acutely anemic and was suffering from a low-grade infection in her system.

This record reveals support services were consistently and repeatedly provided to M.M. to no avail. She complained of inconveniences to her in attending these services. She was furnished transportation to attend and she still failed or refused to attend them. These services were brought to her in her home and she would not show up for them. It cannot be said her lack of money and funds was a primary reason she was unable to follow through with the help, aid, training, and assistance offered and provided for her. Despite the extensive support services provided to M.M. since 1986, she has not been able to stabilize her life. In fact, she has married and separated

and given birth to two more children, one of whom has been placed in foster care.

It is well settled the State must prove the allegations of the petition to terminate by clear and convincing evidence. This includes the requirement that before the court may terminate the parental rights there must be clear and convincing proof the child will suffer harm in a manner specified in section 232.2(6). In the Interest of D.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988). We find and hold the State has sustained its burden in this termination proceeding. We find by clear and convincing evidence if these children remained with their mother, M.M., they would suffer harm in one or more of the manners set forth in Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), or 232.2(6)(g).

We also find and hold there is clear and convincing evidence an additional period of rehabilitation by M.M. would not correct the situation. This satisfies the requirement of Iowa Code section 232.116(5).

Proof by clear and convincing evidence of any one of the types of harm described in Iowa Code section 232.2(6) at the time of the hearing is sufficient to support termination. In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988). The State has the duty to assure that every child within its borders receives proper care and treatment, and must intercede when parents fail to provide it. Our current statutory termination provisions are preventative

as well as remedial. Child custody should be quickly fixed and little disturbed. Children should not be made to suffer indefinitely in parentless limbo. In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

The juvenile court referee summed it up very well when she determined:

All of the service providers indicate [M.M.] may never be able to provide for her own basic, minimal needs, let alone those of her children. These children have waited for over two years. Two years in a child's life is a long time. [These children] have been waiting most of their lives for their mother. They do not need to wait any longer.

We agree.

It is clearly in the best interest of these children that they be placed in a permanent, stable, and nurturing home. It is appropriate here and we are guided by what the Iowa Supreme Court stated in In Interest of D.W., 385 N.W.2d 570, 578 (Iowa 1986):

[This Court would] not deny these children a chance at a brighter future by causing them to suffer in parentless limbo for several more years based on the forlorn hope this mother will finally face her problems, accept counseling, and develop minimal parenting skills.

AFFIRMED.