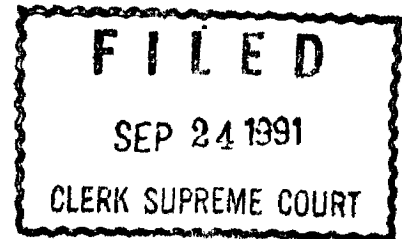


IN THE COURT OF APPEALS OF IOWA

No. 1-370 / 91-766



IN THE INTEREST OF A.G., A Minor Child,
P.G., Mother,
Appellant.

151

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

Mother appeals the termination of her parental rights.
AFFIRMED.

Ronald D. Arispe of the J.W. Conway Law Offices,
Muscatine, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Judy Sheirbon,
Assistant Attorney General, for appellee State.

J. Michael Metcalf of Metcalf, Conlon & Siering,
Muscatine, guardian ad litem for the child (appellee).

Considered en banc.

SCHLEGEL, P.J.

A.G. was born in January 1985. Her parents were married to each other, but the marriage was marked by separations and domestic violence. The father has had little role in her life due to his incarceration. The mother has a history of mental disabilities and severe substance abuse.

The child was adjudged a child in need of assistance in March 1989. The adjudication was based on a lack of reasonable supervision by her mother, P.G., physical abuse by the child's father, M.G., and sexual abuse by an adult male baby-sitter. A.G. has been in foster care since 1988. She was placed in foster care on an emergency basis when her mother attempted suicide and was hospitalized. A.G. continued in foster care because of P.G.'s personal difficulties and the ongoing abuse investigations.

After the CINA adjudication the court approved A.G.'s continuing placement in foster care. A.G. remained in foster care after subsequent review hearings. The juvenile court's last review order on January 17, 1991, suspended all visits between P.G. and A.G. P.G. appealed this suspension in a companion case, In the Interest of A.G. and B.G., No. 91-297 (Iowa App. Sept. 24, 1991). We hold today in that case the issue of suspended visitation is moot because we affirm here the trial court's termination of parental rights.

Following the suspension of visitation the State filed a petition to terminate parental rights in accordance with Iowa Code section 232.116(1)(e). On April 17, 1991, the juvenile court entered an order terminating the parent-child relationships between A.G. and her parents. P.G. appeals this termination order; the father has not appealed. P.G. challenges the sufficiency of the evidence to establish that the child cannot safely be returned to her care. The guardian ad litem joins the State in resisting the appeal. We determine there is clear and convincing evidence to support the termination under Iowa Code section 232.116(1)(e) and accordingly affirm the order of the juvenile court.

Appellate review of termination proceedings is de novo. Iowa R. App. P. 4; In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. W.G., 349 N.W.2d at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate, interests. We consider what the future 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 the parent is capable of providing. Our statutory

termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

Iowa Code section 232.116(1)(e) (1991) 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 the child will suffer harm specified in Iowa Code section 232.2(6) if returned to the parent. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). P.G. contends the State failed to prove by clear and convincing evidence that A.G. cannot be returned to P.G.'s custody without suffering an adjudicatory harm. The evidence clearly establishes that A.G., if returned to the custody of P.G., would be likely to be neglected and would suffer harmful effects as a result of the inability of her mother to provide proper supervision for her.

Stating her parenting skills have improved, P.G. argues her parental rights should not be terminated. P.G. has shown improved ability to care for the two children presently residing with her. In particular, she has discontinued physical discipline and shows improved patience. Unfortunately, however, this improvement has been slow and not significant enough to allow for the

return of A.G. to the home. A.G. is a special needs child who evidence suggests suffers from attention-deficit hyperactivity disorder and has borderline intellectual capacity. The first social worker on this case, Jayne Hart, testified "P.G. has made very little progress on the identified areas" and she was not close to getting A.G. back into her home. The next social worker, Amy Noel, stated she did not observe enough progress in P.G.'s parenting so that the child could be returned home. The last social worker, Regina Schau, stated during the time she was involved with the case P.G. had made "[n]o significant improvements. It has been pretty much the same." Ms. Schau noted that P.G. had made progress in her own personal issues of abuse and domestic violence, but there had also been some areas of regression, particularly in the area of house cleaning.

Appellant's argument that she should be given the opportunity to care for A.G. because her parenting has improved and because she has been able to care for the other two children overlooks the fact the improvement in parenting has been small and the care has been marginal. Ms. Schau stated P.G. has been able to maintain the household with the two children in it, but such maintenance has been at a minimal level. The court appointed special advocate assigned to this case, Ms. Herd, stated "P.G. is stretched to the max and just barely able to handle what she is dealing with right now." Ms. Herd believed that

should A.G. be at the home "everything would be in jeopardy." We agree with the juvenile court assessment that "the length of time services have been provided combined with the limited improvement combines to generate a poor prognosis for acceptable minimization of the adjudicatory harm within a reasonable period of time."

P.G. also contends that by ordering the termination of her parental rights the juvenile court has in part punished her for the lack of improvement by A.G. even though P.G. had no control over the services provided to A.G. A.G.'s behavior has improved since being placed out of the home. A.G. is a special needs child because of her emotional behavior and her attention deficit and consequently needs specialized care. She suffered a great deal of trauma from living in a chaotic, violent home environment during the first four years of life. At the termination hearing it was the consensus of all the social workers involved that P.G. could not at any time in the near future be able to take care of the child under such circumstances. Dr. Ruth Evans, the psychologist who provided play therapy for A.G., testified:

A.G. is definitely at risk for emotional -- her emotional status is at risk. She is making good progress, but is not stabilized by any means, and she is going to take careful handling and consistency; someone who is in good control and can manage her.

The inability of a parent to meet the needs of a child of special needs can warrant the termination of parental

rights. In re J.W.D., 456 N.W.2d 214, 217 (Iowa 1990). We believe there exists a substantial probability that A.G. will suffer a recurrence of the original adjudicatory harm of improper supervision if she is placed back with her mother. The foster parents have the ability to provide specialized care.

P.G. asserts that any lack of improvement in the child's problem behaviors and consequent inability to return home is attributable largely to the lack of services provided by the Iowa Department of Human Services. It is correct that there was a significant delay in the implementation of play therapy for A.G.: it was originally ordered in May of 1990 and actually began on October 16, 1990. We do not believe, however, this was the reason the child could not be placed back with the mother. The recommendation for play therapy was made by the clinical team at the University of Iowa Hospitals and Clinics. Dr. Frasier of that team testified the play therapy was not a controlling matter:

I think that the lack of play therapy was a concern, and yet it was not a major issue. I think the major issues that were brought up in the initial evaluation on February 21, 1990 was that A.G.'s mother, P.G., make some radical and major improvements in her ability to parent and it -- the play therapy was a minor thing.

It is unfortunate that play therapy did not commence sooner. However, because A.G. is a special needs child, P.G. had to make radical and significant improvements in her parenting abilities in order for A.G. to be returned to

her. These improvements have not occurred during the nearly three-year period despite all the services provided the mother.

Termination of rights must occur if twelve of the last eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. In re C.M.T., 433 N.W.2d 55, 57 (Iowa App. 1988) (citing In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983)). Most of the service providers commend P.G. for her efforts undertaken to improve herself but also recognize the need for A.G. to have a permanent, stable home environment. The child has been in foster care since 1988. Time is of the essence in order to provide A.G. with the necessary skills, love, and attention to give her a chance to become a well-adjusted and happy adult. We believe the termination of P.G.'s parental rights is in the best interest of A.G. and affirm the juvenile court order.

AFFIRMED.

All judges concur except Sackett, J., who dissents.

SACKETT, J. (dissenting)

I cannot agree with the majority in either of these cases. This child, born in January 1985, was placed in foster care when the mother was hospitalized after an attempted suicide. The mother has two other siblings.

This child has been identified as a special needs child and has been identified as a child who is difficult to parent. A foster placement for her has been difficult. Since removal, she has been in at least five different foster homes.

Her mother, who is bonded to her, is poor and has attempted to raise three children with a spouse who is not supportive. The mother is currently parenting the other two children who are in her home.

On January 17, 1991, the juvenile court cut off the mother's visitation. The mother has appealed from the juvenile court's order terminating her visitation rights with one of her three children. The majority has elected not to address this issue. Instead, they have affirmed a juvenile court order terminating this mother's parental rights. The termination of her parental rights was filed after this appeal from the order denying visitation. Consequently, the majority finds the issue of visitation is moot. I do not agree with the majority's conclusion the termination should be addressed first.

The majority is well intentioned in their desire not to have unreasonable delays. The majority justifies the need to move forward with termination by finding termination will give this child a permanent, stable home and environment, love and attention, and the chance to become a well-adjusted adult. I do not share the majority's optimism that termination of parental rights will provide these things for this child. Termination does not bring with it any guarantee of adoption for this special needs child. Even if there is an adoption, the child will suffer a number of problems having her biological ties cut. This is an older child, she is bonded to her mother and the two siblings in her mother's care.

I find when the juvenile court cut off visitation the State was no longer employing reasonable efforts to reunify this family.

It should be rare when an agency is using reasonable efforts to preserve a family that visitation with the parent be cut off. If the parent is so disruptive or so abusive that the child is in actual danger, then the direction should be termination of parental rights at the earliest possible date.

Visitation between a parent and his or her child has been shown by numerous studies to be one of the most important, if not the most important, reunification service. See Shotton, Making Reasonable Efforts in Child

Abuse and Neglect Cases, 26 Cal. West L.Rev. 223, 249 citing Fansel, D., On the road to permanency, CWLA, New York, 1982 (Children visited frequently are more likely to be released from foster care); Weinstein, E., The Self-Image of The Foster Child, Russell Sage Foundation, New York (1960) (frequent visiting is associated with emotional well-being of children and parent). An agency's keeping a child from his or her parent for less than extremely important reasons should be unacceptable. See In re Kristina I., 520 A.2d 574 (R.I. 1987).

If there are problems with the visitation, then efforts should be directed to discovering the root of the problem and attempting to correct it.

We should be realistic in assessing visitation problems. Even in the best homes, parents and children have disagreements. Children go through periods when they are disturbed by their parents, when they don't want to have anything to do with their parents, when they fight with their parents. The visitations must be gauged by realistic yardsticks.

Unless the child is in eminent danger, the visitations should always provide for time alone between the parent and child. If the parent is at loss on how to spend this time, efforts should be made to assist the parent in scheduling activities where he or she will have independent dialogue with the child.

There is no evidence this mother presents a danger to this child. The juvenile court has allowed her older two children to remain with her. Furthermore, it is difficult to determine what problems are the result of the mother's visitation and what problems resulted from the five different foster care placements the child had while in the State's care.

For visitations to be successful in reuniting the family, it is necessary that foster parents and alternate care providers are encouraged to cooperate with parents. Foster parents should be advised that the purpose of foster placement is to work toward returning the child home. Foster parents should be advised that their position in the system is not to gather evidence on the parents. Visitations wherever possible should include the foster parents and the natural parents. They should be encouraged to communicate for the children's good.

Where possible, foster parents and natural parents should be encouraged to arrange the visitation without department assistance. This will conserve limited resources. It should provide for visitation that might not otherwise be available because of the limited availability of department personnel. In assessing visitation, we must recognize there will be problems. Our efforts must be directed to working on these problems. Only serious problems should justify a termination of visitation. I do

not find, from this record, the problems were serious enough to terminate visitation. This mother was found to be an adequate parent to two children that are in her home. There was no reason to terminate her visitation with her other child.

We are required to use reasonable efforts to reunify families. I find terminating visitation entirely under the facts of this case meant reasonable efforts were no longer being utilized. Totally cutting off this child from her natural mother put this child at risk. I would modify the order terminating visitation. I would remand to the juvenile court to restore visitation and order the agency to present a plan that will work toward reunification and allow this child maximum contact with her mother and siblings that are in the mother's care. I would reverse the termination.