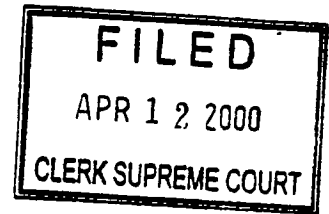


IN THE COURT OF APPEALS OF IOWA

No. 0-63 / 99-914
Filed April 12, 2000



IN THE INTEREST OF

M.L. and J.L., Minor Children,

S.H., Mother,
Appellant,

T.L., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Douglas Staskal,
District Associate Judge.

Mother and father appeal the district court's order terminating their
parental rights to their two children. **AFFIRMED.**

Mike Bandstra, Des Moines, for appellant-mother.

J. Michael Mayer, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Cory McClure, Assistant County Attorney, for appellee.

Nancy Pietz of Cook & Brown, P.L.C., Clive, guardian ad litem for minor
children.

Heard by Huitink, P.J., and Streit and Miller, JJ..

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STREIT, J.

Stacy and Terry appeal the termination of their parental rights, claiming the State failed to prove the statutory elements for termination were met by clear and convincing evidence and termination was in their children's best interests. We affirm finding no merit to their claims.

I. Background Facts & Proceedings.

Monique, age eight, and Jordynn, age six, are the children of Stacy and Terry. The department of human services (DHS) first became involved with the children in 1995, after a founded child abuse report was filed against the maternal grandfather. The grandfather had held Monique's head under the water because she failed to cooperate with her hair being washed. Stacy additionally said the children's grandfather had sexually assaulted her as a child. Stemming from the incident and Stacy's story of abuse, DHS recommended Stacey not leave the children with the grandparents. Three months later, however, Stacy and the children were living with these grandparents when Stacy abruptly left without word of her whereabouts for three days. When Stacey returned, both grandparents were heavily intoxicated, as was their normal evening practice, and grandmother, in an explicative-laced tirade, assaulted Stacy. The police were called and, as grandmother was being led away, grandfather awoke and stumbled into the living room *al natural*. It took several sharp commands from the officers before grandfather realized his nakedness and put on some shorts. Grandfather, too, was arrested.

The children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (d) (1995) because the

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children had no stable residence and Stacy and Terry, the father, continued to leave the children in the care of the maternal grandparents. Stacy did not appear at the adjudication, and her whereabouts were unknown until she resurfaced three months later. The children were placed in foster care. After Stacy reappeared services were offered, but she continued to exhibit irresponsibility, immaturity, and compulsive tendencies. She continued to take the children to the grandparents despite a no-contact order. She perjured herself in court, which lead to her incarceration. During this time, Terry's involvement with the children was lukewarm at best. He failed to comply with random drug testing and only halfheartedly participated in the children's therapy.

In October of 1997, while Stacy was still in prison for perjury, the court held a termination hearing. The court found clear and convincing evidence to support the statutory elements for termination, but concluded termination was not in the children's best interests. The children remained in foster care, Stacy was paroled, and reunification efforts began with Terry. Those efforts were hampered, however, by Terry's job instability, the suspension of his driver's license, his sporadic attendance at therapy, and his inconsistency in visiting the children.

The children were placed with Terry in June of 1998. Within weeks of their placement, Terry assaulted Stacy in front of the children, and the children continued to have contact with the grandparents. In September of 1998 the children were removed from Terry's care after he went to the home of the grandparents with Jordynn and again assaulted Stacy. Terry then fled in the

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grandmother's car and removed Monique from school. Terry was arrested for domestic assault.

Services continued after the children's removal, but with little success. Stacy submitted to random urinalysis on only twelve of the twenty-nine requests made by DHS. She completed an outpatient drug treatment program but tested positive for cocaine a few weeks later. She claimed the positive result was the result of having sex with Terry who was dealing and using drugs. Terry continued to permit the grandparents to see the children and continued to battle his financial and legal difficulties. Finally, in January of 1999, a second petition to terminate parental rights was filed. The court terminated the parental rights of both Stacy and Terry under Iowa Code sections 232.116(1)(c) and (e) (1999).

Both parents now appeal, claiming the State failed to establish by clear and convincing evidence grounds for termination existed and termination was in the children's best interests.

II. Standard of Review.

Appellate review of 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." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). 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. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

~~III. The Children Could Not Be Safely Returned to Either Parent.~~

The parents first claim the State failed to prove the children could not be safely returned to their care.

Iowa Code section 232.116(1)(e) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (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.

Stacy and Terry do not dispute the first three elements are supported by clear and convincing evidence. They only claim the juvenile court erred in finding Monique and Jordynn cannot be safely returned to their care.

The court has long recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility: *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). The State must act to prevent probable harm to children and need not delay until actual physical harm has occurred. *Id.* The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the children's

initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Our primary concern in a termination proceeding is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d at 745.

Returning Monique and Jordynn to either one of the parents would expose them to a threat of identifiable harm. We can gain insight into the children's prospects for remaining safe and healthy by reviewing evidence of the parents' past performances, for it may be indicative of the parents' future capabilities. See *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). Neither parent possesses the dedication, foresight, sense of responsibility, or willingness to raise these children in a healthy atmosphere. Both parents have continually disregarded court orders regarding the children's contact with their maternal grandparents. The parents' interpersonal relationship with one another is a roller coaster of abuse and reconciliation. The parents have consistently demonstrated their lack of insight into their children's safety and needs. They fail to understand how their infighting, their exposure of the children to the grandparents, their assorted run-ins with the law, and their financial and residential instability affects the proper development of their children. Stacy's criminal history, substance abuse, and compulsive personality continue to plague her relationship with the children. Terry clearly lacks the ability to control his anger and continues to flounder in a myriad of legal and financial troubles. Stacy has made some efforts to stabilize her life. The children's therapist did not believe termination of Terry's parental rights was in the children's best interests. However, we cannot permit these parents to squander these children's childhoods waiting for them to become just that—parents. Although each problematic area outlined above may not be worthy

of termination in isolation, in the aggregate the problems were overwhelming and endangered the children's future health and safety. The juvenile court, based on clear and convincing evidence, correctly terminated the parental rights of both parents under Iowa Code section 232.116(1)(e).

As "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm," we need not address the merits under section 232.116(1)(c). *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted).

IV. Termination Is the Children's Best Interests.

Stacy and Terry next claim termination was not in the children's best interests.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the children. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the children are the paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re N.H.*, 383 N.W.2d at 574. We give primary consideration to the physical, mental, and emotional condition and needs of the children. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). With regard to those primary considerations, children should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). For "[p]arenting cannot be turned off and on like a spigot; [i]t must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). While we recognize the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," Iowa has built this patience into the statutory

~~scheme of chapter 232~~ *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987).

Chapter ~~232~~ fosters patience by prescribing certain steps to protect the rights of natural parents in termination proceedings. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). However,

[t]here are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process.

In re A.C., 415 N.W.2d at 613.

Termination of the parental rights of both parents is in children's best interests. Terry claims an emotional bond to the children, but his instability, lack of foresight, and unwillingness to address his problems countermand even the most tender emotional bond. At the time of trial, these children had been out of the home nearly three years. The parents have stretched the statutory patience of Iowa chapter 232 so tightly that even the slightest incident would snap its unquivering tension. The parents, however, continued to pull. The children are excellent candidates for adoption, and the foster parents who have cared for the children throughout this ordeal have expressed interest in adopting the children. Termination was in the children's best interests. The juvenile court is affirmed.

AFFIRMED.

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