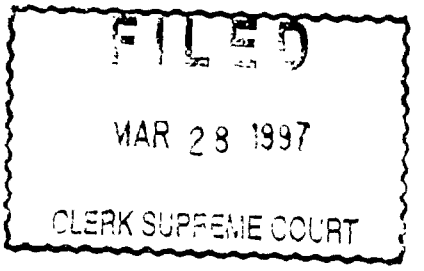
IN THE COURT OF APPEALS OF IOWA

No. 7-112 / 96-1654

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

A.H., Mother,
Appellant.



Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn, Associate Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Kevin S. Maughan of Pabst & Maughan, Albia, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Mark Kruse, County Attorney, for appellee.

Jonathan Willier, Centerville, for minor children.

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

HABHAB, C.J.

Appellant, Ann, and Kenneth Sr., are the parents of Lisa, born December 19, 1985, and Ashley, born March 24, 1987. They also have a son, Kenneth Jr., born March 15, 1984, who was not a subject of these termination proceedings.

While residing in Colorado, all of the children were adjudicated children in need of assistance (CINA) due to parental neglect and physical abuse. Kenneth Jr. and Lisa were sexually abused, and they claimed their father was the perpetrator. While in Colorado, the children were twice placed in foster care for periods of four months and two years.

With the consent of Colorado authorities, Ann moved the children to Iowa. Here they were the subject of several founded child abuse reports, including physical abuse, a denial of critical care, and improper supervision by their mother. The children were adjudicated CINA in Iowa in June 1993. They remained in their mother's care until August 1993 when they were removed. The girls have been in foster care and Kenneth has been in residential treatment since that time.

A petition to terminate parental rights was filed on March 22, 1996. Kenneth Sr. did not appear for the trial. On August 22, 1996, the court filed an order terminating Ann and Kenneth Sr.'s parental rights. The court found termination was in the children's best interests. Its order specified Ann and Kenneth Sr.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b) (1995) (child

abandoned or deserted) and 232.116(1)(e) (child four years of age or older, adjudicated CINA, removed from physical custody of parents for at least twelve of last eighteen months or for last twelve consecutive months and any trial period at home was less than thirty days, and child cannot be returned to custody of parents without risk of adjudicatory harm).

Ann appeals the termination of her parental rights.[1] She argues (1) there was not clear and convincing evidence to terminate her parental rights pursuant to section 232.116(1)(e); (2) reasonable efforts were not made to return the children to her custody; (3) the best interests of the children do not support a termination; and (4) there was not clear and convincing evidence to terminate her parental rights pursuant to section 232.116(1)(b).

The State concedes section 232.116(1)(b) does not apply to Ann. However, it argues there was evidence to support the termination of her parental rights pursuant to section 232.116(1)(e).

I. Scope of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544

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[1] The termination of Kenneth Sr.'s parental rights is not before us.

N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> 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 T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Clear and Convincing Evidence. Ann asserts there was not clear and convincing evidence presented to the trial court to warrant termination of her parental rights pursuant to Iowa Code section 232.116(1)(e).

In terminating Ann's parental rights, the court found the children could not be returned to her and be protected against the following dangers and harms:

> (a) harmful effects as a result of prospective physical abuse by mother;
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> (b) harmful effects as a result of prospective physical and/or sexual abuse by other caretakers or transients;
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> (c) harmful effects as a result of prospective emotional abuse by mother due to her inability to understand or meet children's need or allay their fears;
>
> (d) harmful effects as a result of prospective lack of proper supervision and care.

Ann maintains she has addressed the issues of prosecutive physical abuse in therapy and is better able to control her temper. There were no persons living with

Ann in her home at the time of the hearing and she has had no paramours since March 1994. Ann alleges her participation in therapy has given insight into the abuse the children have suffered and the need to prevent further abuse. She has also participated in services to learn to deal with the children's special needs and alleges she has properly disciplined and cared for the children during her supervised visits. Finally, she points out she has maintained stable employment, her home is safe and sanitary, and she has utilized all available services to secure the necessary changes in her life to regain custody of her children.

The record reveals that since their return to Iowa there have been several founded reports of abuse regarding the children. These reports reveal Ann has been physically abusive to Ashley. She was found to have denied the children critical care in permitting them to stay overnight in the home of her brother, who has been convicted of child sexual abuse. Another report founded "physical abuse by omission" against Ann as she apparently allowed contact with the children's father, Kenneth Sr. The report also found Kenneth Sr. had bruised Ashley's leg. Yet another report was founded as Ann failed to provide sufficient supervision of the children.

At trial several witnesses testified about the children's past trauma and current emotional condition. Deb Luke, a caseworker who has worked extensively with Ann and Ashley, testified at trial. She stated Ashley has special needs which include coping skills and the need to manage her anger. Ashley has a difficult time knowing

what to do with her anger without becoming destructive. She explained Ashley would need a very nurturing and consistent environment. Luke also indicated the uncertainty of remaining in foster care would slow down Ashley's therapeutic process. She explained Ashley is bonded with her foster parents, is adoptable, and is doing "wonderfully" in her foster placement.

Luke went on to testify that in her opinion Ann's parental rights should be terminated. She opined termination would afford Ashley the opportunity to be adopted into a stable environment. She explained Ashley associated much trauma with Ann's care and there was no bond between Ashley and Ann. She testified Ashley does not speak of her mother and she does not seem to suffer from any separation anxiety as is typical of children in foster care.

Luke also supervised visitation. When picking Ashley up from school for the visits, Luke noticed Ashley's total affect would change and she would display disassociative behaviors. During her visits with Ann, Ashley's behavior regressed. Her speech patterns became babyish and unclear. She began to act like a small child and would try to get Ann's attention anyway she could. At times she was nervous and jittery. After visits she often became angry, aggressive, or self-destructive.

Luke explained that although Ann had participated in services, she had difficulty learning parenting skills and implementing want she was able to learn. She did note Ann made some improvements, but she did not feel Ann would be capable of meeting Ashley's emotional needs because of the past trauma Ashley experienced

while in Ann's care. She expressed concerns regarding Ann's ability to protect the children from future physical abuse. She also stated she did not believe Ann could provide the consistency, supervision, and nurturing a special needs child would require and continued services would not be of benefit in reunification efforts.

Marcia Benjamin also testified at trial. She is a caseworker for the children and works for the Department of Human Services (the Department). She explained when supervised visits with Ann occurred after a six-month period of suspended visitation, Lisa's behavior also regressed. She added that both Lisa and Ashley suffer from oppositional-defiant disorders, ADD, conduct disorders, developmental disorders, and both have reactive attachment characteristics. She expressed her opinion that both girls need extreme nurturing and structured and consistent environments with special parenting for their special needs.

Benjamin further stated that despite the extensive services received by Ann, she did not feel the children could be safely returned to her custody. She expressed concerns that Ann was not at a sufficient level of skill and lacked insight into the prior abuse to the children and their behaviors. Benjamin also expressed concerns about the risk of future abuse to the girls. She explained Ann has been unable to attain the goal of making the children feel safe at home. She also recommended termination of Ann's parental rights.

Portia Andre testified she and her husband have been Ashley's foster parents for the past one-and-one-half years. She stated Ashley's severe behavior problems

have been improving. The latest report from the school indicated Ashley was no longer having behavior problems and she would no longer be labeled as suffering from a behavior disorder. Her social and academic skills had also markedly improved. Andre explained that after visiting Ann, however, Ashley would often regress. She became very hyper, would break toys, and would not sleep well at night. Ann had unsupervised visitation in June 1995. After the visit, Andre reported Ashley's heart began racing and she then dug scratches into her arms and into her chest area. Andre indicated Ashley had improved since the visits with Ann were cut back to once a month, but she still regresses when she knows a visit is coming up.

Thelma Webb testified she was the treatment foster parent for Lisa for over two years. She testified that initially Lisa would hide from her and would lie and steal. Lisa experienced difficulty sleeping and often "prowled" around at night. Webb testified that although Lisa has progressed, she still has special needs requiring a lot of reaffirmation and follow-through regarding stealing. Her social skills are somewhat deficient and she still has some problem with lying.

Kathy Rosenblum is the play and art therapist for both Ashley and Lisa. She testified both children were generally very fearful. She explained the children could not be safely returned to Ann's custody because of the trauma they experienced while in her care. Rosenblum also stated she did not feel Ann had obtained the necessary insight and continued to blame others for the problems she experienced with the

children. Rosenblum felt that if returned, the probability Ashley would severely regress was great.

We find there is clear and convincing evidence in the record to support termination of Ann's parental rights pursuant to Iowa Code section 232.116(1)(e). The record establishes the children cannot be returned to Ann at this time. We will not require children to endlessly await the maturity of their natural parent. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)).

These children need a safe, stable home and a nurturing environment which Ann has been unable to provide in the past and shows no ability to provide in the future. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96. The children have been in foster care in this state for over three years. Before that time, they were in foster care in the State of Colorado. Ann has had more than ample time to make the necessary changes in her life to assume the care of the children but has failed to do so. We find

the best interest of Lisa and Ashley mandate the termination of Ann's parental rights. We affirm the juvenile court's order terminating those rights.[2]

III. Best Interest of the Children. For the reasons set forth in section two of this opinion, we find the best interest of Ashley and Lisa warrants termination of Ann's parental rights.

IV. Services Provided by the Department. Reasonable services must be provided in an attempt to preserve the family unity before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Ann argues the Department failed to make reasonable efforts to return the children to her care. She contends the children should have been offered services to alleviate the children's fear of her, their lack of trust in her, and their negative reaction to visitation. Specifically, she asserts the children should have been treated by psychiatrists or psychologists.

Our review of the record reveals both girls were professionally evaluated and appropriate recommendations for services were made. The psychiatric services requested by Ann were not recommended. Luke testified these services were not

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[2] The State asserts termination of Ann's parental rights was also sought under Iowa Code section 232.116(1) (child in the family has been adjudicated CINA due to physical or sexual abuse or neglect as the result of acts or omissions of one or both parents, the parents were offered or received services to correct the circumstances which led to the adjudication, and the circumstances continue to exist). It maintains although this section of the Code was not mentioned by the trial court in its ruling, it did make explicit findings relevant to that section. As we have found there is clear and convincing evidence to support termination of Ann's parental rights under 232.1169(1)(e), we do not reach this issue.

appropriate for the children at this time. The girls have received counseling from numerous individuals, therapists, and clinics through the Department.

In our de novo review of the record, we find both Ann and the children have received services necessary to meet their individual needs. We reject Ann's argument the Department failed to provide reasonable services for reunification.

*V. **Termination Pursuant to 232.116(b).*** As the State concedes section 232.116(1)(b) does not apply to Ann, we need not address this issue.

AFFIRMED.