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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-460 / 92-423

**IN THE INTEREST OF E.M., E.M., N.M. and A.M.,** Minor Children,

**B.M.,** Mother,

Appellant.

**T.R.,** Father,

Appellant.

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Appeal from the Iowa District Court for Black County, Alan D. Allbee, Judge.

The natural mother and father of four minor children appeal a judgment of the district court terminating their parental rights. **AFFIRMED.**

Craig Ament of Olson, Parsons & Ament, Cedar Falls, for appellant mother, B.M.

Paul T. Shinkle of Gottschalk & Shinkle, Cedar Falls, for appellant father T.R.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Katherine S. Miller-Todd, Assistant Attorney General; James M. Metcalf, County Attorney; and Daniel L. Block, Assistant County Attorney, for appellee.

Douglas V. Coonrad, Hudson, guardian ad litem for minor children.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

**DONIELSON, P.J.**

Bonita[1] and Tom[2] appeal a judgment of the juvenile court terminating their parental rights. Bonita and Tom had four children: Eddy, born in 1985; Nancy, born in 1986; Greg, born in 1987; and Anne, born in 1988.[3] Bonita was also the natural mother of another child, Eugene, born in 1982 when Bonita was only fourteen years old.

Bonita has been diagnosed as having a below average I.Q. Tom has been continuously involved with the juvenile court system since he was a young child. He has a history of cocaine use and has been diagnosed with having a conduct disorder. As an adult, Tom has had nineteen arrests and eighteen convictions and he has been in and out of jails and prisons since 1986. During his periods of incarceration, Tom has had only minimal contact with the children.

In 1985, Bonita first came to the attention of the Department of Human Services when Eddy was taken to the hospital. Bonita claimed Eugene had dropped Eddy on the kitchen floor while she was in the shower. No action was recommended at that time.

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1. The mother's initials are B.M. Bonita is not her given name.

2. The father's initials are T.R. Tom is not his given name.

3. The children's initials are E.M., N.M., G.R. and A.M. Eddy, Nancy, Greg, and Anne are not their given names.

In 1988, another child abuse investigation was conducted. Greg had been prematurely born with underdeveloped lungs and required critical care. In March of that year, Greg was treated for a severely fractured femur. Bonita claimed one of the children had dropped Greg while she was taking a shower. A child in need of assistance petition was filed on behalf of Greg, and he was placed in foster care. The other children were also examined for injuries. Both Eddy and Eugene were found to have bruises on their legs and buttocks. A petition was filed on behalf of Eugene, Eddy, and Nancy alleging they were children in need of assistance.

In January 1989, another child abuse referral was filed on behalf of Eugene. Bonita had allowed Eugene to walk to school in freezing temperatures, and Eugene waited in the cold outside for over an hour. Bonita had failed to advise the school of her new address, which was on a school bus route. Throughout most of 1989, Bonita was offered, but refused numerous services, including supervised apartment living through Exceptional Persons, Inc. During this same time, the protective day care had submitted twenty "alert sheets" on the status of Eddy and Nancy. By the November 1989 review hearing, the court had determined Bonita had failed to cooperate with court-ordered protective supervision and had significantly neglected the children.

Also in November 1989, a CINA petition was filed on behalf of Anne, alleging Bonita had been consistently

unable and unwilling to cooperate with services. A few weeks later, a temporary removal hearing was held after officials discovered Bonita had moved without informing the department and after Bonita tested positive for cocaine use. All the children were placed under the care and custody of the Department of Human Services. Bonita continued to be resistive to services.

In January 1990, Eugene was placed with his uncle and the other children were placed in family foster care. In February 1990, Bonita gave birth to another child, who was placed with her paternal grandmother. In March 1990, Bonita completed an in-patient substance abuse program, but failed to participate in aftercare. After weeks of resistance, Bonita finally agreed to meet with officials from Exceptional Persons, but was arrested shortly before the meeting. She was in jail from late July to late August.

A hearing was held in May 1990, regarding a petition to terminate Bonita's parental rights as to Greg. Greg had been in foster care for two years and Bonita had not visited him since August 1989. In June 1990, the parental rights of Bonita and Tom as to Greg were terminated.

In October 1990, Bonita was arrested on a theft charge. She was still incarcerated at the time of the review hearing in January 1991. During that period, Bonita failed to request any visits with her children and had not contacted her social worker. In February 1991, Bonita was

sentenced and was in prison for about the next eleven months.

In June 1991, a petition to terminate parental rights as to Eugene, Eddy, Nancy and Anne was filed. During the preceding months, Bonita had made no attempts to contact the children.

At the termination hearing, Bonita testified she had been using drugs before her imprisonment. Bonita had recently been released from prison and she testified she planned to go to school, obtain her GED, and find a comfortable apartment for her and her children. However, by the time of the hearing, she had not acted on any of these plans.

Tom, the natural father, did not contest the termination proceedings with respect to himself. He had had virtually no contact with the children for several years and had provided no support for their welfare.

In February 1992, the district court ordered the parents' parental rights be terminated as to Eddy, Nancy, and Anne, pursuant to Iowa Code sections 232.116(1)(c)-(h) (1991). The district court did not terminate Bonita's rights with regard to Eugene, who had been placed with an uncle. Bonita and Tom now appeal.

Bonita argues there was insufficient evidence to support the termination of her parental rights. Tom also argues there was insufficient evidence to support the termination of Bonita's parental rights and, therefore no

useful purpose would be served by terminating his parental rights. Tom also argues the petition was not properly verified by the stamped signature of an assistant county attorney. Tom does not argue there was insufficient evidence to support the termination of his own rights.

Appellate review of termination proceedings is de novo. 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. Id. at 491-92.

I. **Sufficiency of the Evidence to Support the Termination of Bonita's Parental Rights.** The parental rights of Bonita and Tom were terminated under Iowa Code sections 232.116 (1)(c)-(h) (1991). Bonita and Tom contend there was not clear and convincing evidence under each section to support the termination of Bonita's parental rights.

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).

**A. Iowa Code section 232.116(1)(c).** Under Iowa Code section 232.116(1)(c) (1991), the court may order the termination of parental rights if it finds both of the following have occurred:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(c) (1991).

Bonita argues there was no adjudication of Nancy or Anne on the basis of physical abuse or neglect. We disagree. Here, Eddy, Nancy and Anne have all been adjudicated to be in need of assistance. Nancy was adjudicated to be in need of assistance not only on the basis of the physical abuse inflicted upon her brothers, Eugene and Eddy, but on a founded report of a denial of critical care regarding herself and her siblings. Anne was also adjudicated to be in need of assistance on the basis of a founded report of a denial of critical care regarding herself and her siblings.

We further find Bonita continually refused to take advantage of the services offered to her by the Department of Human Services and the circumstances which led to the adjudications above continue to exist. We find there is clear and convincing evidence of Bonita's lack of care and concern for her children and find the State has proved the elements of Iowa Code section 232.116(1)(c) (1991).

**B. Iowa Code section 232.116(1)(d).** Under Iowa Code section 232.116(1)(d) (1991), the court may order the termination of parental rights if it finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

Iowa Code § 232.116(1)(d) (1991).

Bonita argues the primary reason for her inability to maintain contact with her children during those six months was her incarceration. We disagree. At the termination hearing, her social worker testified she had encouraged Bonita to write letters to the children during her period of incarceration. However, between February 1991 and the fall of 1991, about eight months, Bonita made no efforts to contact her children. We find the juvenile court did not

err in terminating Bonita's parental rights pursuant to section 232.116(1)(d).

**C. Iowa Code sections 232.116(1)(e) and (g).** Iowa Code sections 232.116(1)(e) and (g) (1991) allow for termination if the child has been adjudicated to be in need of assistance pursuant to section 232.96, the child has been out of the home for the requisite number of months,[4] and there is clear and convincing evidence at the present time the child cannot be returned to the custody of the child's parents.

Bonita contends the juvenile court erred by considering her inability to care for Greg in determining whether the remaining children were able to return to her custody at the time of the hearing. Bonita further contends she loves her children and would have a suitable home for her children in about three months from the time of the hearing.

All three children have been removed from the home for about two years. To continue to keep children in temporary foster homes is not in their best interests. In re J.L.P., 449 N.W.2d 349, 353 (Iowa 1989). We find there is clear

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4. Where the child is four years of age or older, the custody of the child much have been transferred from the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months. Iowa Code § 232.116(1)(e) (1991). Where the child is three years of age or younger, the custody of the child must have been transferred from the child's parents for at least six months of the last twelve months, or for the last consecutive six months. Iowa Code § 232.116(1)(g) (1991).

and convincing evidence the children cannot be returned to the custody of Bonita. These children should not be forced to endlessly await the maturity of their mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has proven the elements of Iowa Code sections 232.116(1)(e) and (g) (1991).

**D. Iowa Code section 232.116(1)(f).** Under Iowa Code section 232.116(1)(f) (1991), the court may order the termination of parental rights if it finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
> (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Iowa Code § 232.116(1)(f) (1991).

Based on Bonita's continual unwillingness to cooperate with the Department of Human Services and the length of time during which no progress has been made, we find there is clear and convincing evidence that any additional time would be of no help to the situation. The State has proved the elements of Iowa Code section 232.116(1)(f) (1991).

**E. Iowa Code section 232.116(1)(h).** Under Iowa Code section 232.116(1)(h) (1991), the court may order the termination of parental rights if it finds the following have occurred:

> (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts of omissions of one or both parents.
> (2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitute imminent danger.

Iowa Code § 232.116(1)(h) (1991).

Bonita argues there was not clear and convincing evidence of "imminent danger." We do not agree. We note the juvenile court's findings: "[T]here exists clear and convincing evidence that the circumstances surrounding the abuse or neglect of the children in interest, despite the receipt of services, constitute imminent danger to the children in interest." Throughout the past few years, Bonita has been involved in criminal activity and extensive cocaine use. She has physically neglected and physically abused her children. Finally, Bonita has adamantly refused to address any of these problems. Together, we find these circumstances constitute "imminent danger" and affirm the termination under section 232.116(1)(h).

**II. Sufficiency of the Evidence to Support the Termination of Tom's Parental Rights.** Tom argues since Bonita's rights should not be terminated, no useful purpose would be served by also terminating his rights.

As we find Bonita's rights were properly terminated, we find Tom's argument to be without merit. Furthermore, we find clear and convincing evidence existed to terminate Tom's parental rights under Iowa Code sections 232.116(1)(c)-(h) (1991), as discussed above.

**III. Verification of the Petition.** Tom also argues the petition for termination was improperly verified, as the signature on the petition was the stamped signature of the assistant county attorney.

We do not agree. Here, the assistant county attorney swore before the court that he had reviewed the petition and that he thought the petition was fine before having the petition stamped with his signature. "The issue is not how the name is placed on a sheet of paper; rather, the issue is whether the person whose name is affixed intends to be bound." Wilkens v. Iowa Ins. Comm'r, 457 N.W.2d 1, 3 (Iowa App. 1990).

We find the juvenile court correctly concluded there was substantial compliance and the petition was properly verified.

The costs of this appeal are to be equally divided between Bonita and Tom.

For all the reasons stated, we affirm the judgment of the juvenile court.

**AFFIRMED.**