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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-61 / 89-1569

IN RE C.E.B., A Minor Child;

K.B. and C.B., Parents,

Appellants.

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Appeal from the Iowa District Court for Scott County Arlen J. Van Zee, Judge.

The natural parents of a three-year-old girl appeal from the juvenile court order terminating their parental rights. **AFFIRMED.**

Becky Fitz Flores, Davenport, for appellants.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee, the State of Iowa.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

The natural parents, K.B. and C.B., appeal the decision of the juvenile court terminating their parental rights to their three-year-old girl, C.E.B. They challenge the sufficiency of the evidence to establish that C.E.B. cannot safely be returned to their custody and that they lack the ability or willingness to respond to services. We affirm the termination order.

Our review of termination proceedings is de novo. In Interest of D.T., 418 N.W.2d 355, 355-56 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Our paramount concern is the welfare and the long-term, as well as immediate, best interests of the child. In Interest of D.T., 435 N.W.2d 323, 329 (Iowa 1989); In Interest of S.V., 401 N.W.2d 201, 202 (Iowa App. 1986).

The mother, K.B., and the father, C.B., are the natural parents of C.E.B., born August 6, 1986. C.E.B. was removed from the home and placed in foster care in March 1987 when she was approximately eighteen (18) months old. C.E.B. has remained in foster care since. At the time of C.E.B.'s birth three of her siblings had already been placed in foster care. C.E.B.'s older siblings had been removed from the home because of severe neglect. C.E.B. was adjudicated a child in need of assistance in March 1988. K.B. and

C.B.'s parental rights to C.E.B.'s three siblings were terminated by the same court order that adjudicated C.E.B. to be a child in need of assistance. This court affirmed the termination of C.E.B.'s siblings on October 20, 1988. In Interest of B.K.B., B.C.B., and C.E.B., Minor Children, No. 8-452, slip op. at 6 (Iowa App. Oct. 20, 1988). We also affirmed C.E.B.'s adjudication as a child in need of assistance on February 23, 1989. In Interest of C.E.B., No. 8-665, slip op. (Iowa App. Feb. 23, 1989).

In May 1989, the State of Iowa filed a petition for termination of K.B.'s and C.B.'s parental rights with respect to C.E.B. In July 1989, the juvenile court entered an order terminating K.B.'s and C.B.'s parental rights. The parents have appealed.

The parents contend there was insufficient evidence that C.E.B. would suffer harm if returned to them. Specifically, they contend there is not clear and convincing evidence to support termination of their parental rights.

Central to a determination of this nature are the long-term, as well as immediate, best interests of the children. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We consider what the future holds for C.E.B. if returned to her parents. Id. Essential to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight

may be gleaned as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). The past behavior of the parent is an important factor to be considered by the court. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). Iowa statutory termination provisions are preventative as well as remedial. Interest of Dameron, 306 N.W.2d at 745. They are designed to prevent probable harm to a child. Id.

The State must prove by clear and convincing evidence the allegations contained in the termination petition. See In Interest of C.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988); Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 599, 617 (1982). Termination may occur under Iowa Code section 232.116(1)(e) if the juvenile court finds: (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 for at least twelve of the last eighteen months, (3) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102. In Interest of A.C., 415 N.W.2d 609, 612 (Iowa 1987).

The issue in dispute herein concerns whether there is clear and convincing evidence that C.E.B. cannot be returned to K.B.'s and C.B.'s custody. This third

requirement of section 232.116(1)(e) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist. In Interest of A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

Upon our review of the extensive record in this case, we believe there is clear and convincing evidence that C.E.B. would be in imminent threat of those harms detailed in section 232.2(6) if she were returned to her parent's care. We make this determination after specifically examining the parents' past performance, as it may be indicative of the quality of future care the parents are capable of providing. See O'Neal, 303 N.W.2d at 423. Particularly in this case, we believe the past behavior of these parents is an important factor to consider.

The record reveals that K.B. and C.B. have shown no positive gains since C.E.B. was placed in foster care. In affirming C.E.B.'s adjudication as a child in need of assistance, this court concluded that C.E.B.'s delayed gross motor development was a manifestation of K.B.'s and C.B.'s chronic history of neglect and failure to provide for the educational and emotional services of their children. In Interest of C.E.B., No. 8-665, slip op. at 3-4 (Iowa App. Feb. 23, 1989). We specifically found that while K.B. and C.B. "historically failed to provide for their other children, they have failed to provide for

C.E.B.'s physical and social needs as well." Id. at 4. C.E.B. continues to suffer from developmental delay and some emotional behavioral problems. Since the parents have not made any positive gains in addressing those problems that resulted in the initial removal of C.E.B. and her siblings, we believe C.E.B. is still imminently likely to suffer harm if returned to her parent's custody.

Although K.B. and C.B.'s past behavior is an important factor in our determination, it is not the sole factor in our analysis of C.E.B.'s best interests. In an outpatient summary report dated April 27, 1989, the Child Development Clinic found no changes in K.B.'s and C.B.'s parenting capacities or motivations. The report noted that "[i]n many respects, there has been no fundamental change since the family was first seen in the Child Development Clinic in 1972." The report concludes that the prognosis for future change is highly unlikely.

The record further reveals that this family has received extensive social services since 1972. We further note that K.B. and C.B. have not cooperated with services provided to them. Additionally, that K.B. has not followed through with her mental health treatment. K.B. suffers from severe emotional problems. She has been diagnosed as having schizotypical personality disorder, paranoid personality disorder, and histrionic personality disorder. Health professionals and social workers have described K.B.

as neurotic, manipulative, and overbearing. Social worker Pat Fennelly testified that if C.E.B. was returned to her parents' custody she would suffer both emotional and physical harm. She further stated that K.B. was worse off mentally as she seems to have become more threatening. Fennelly stated that since C.E.B. is already at a high risk of emotional damage she would suffer more emotional harm if returned because of K.B.'s emotional problems. We agree.

The Iowa Supreme Court has held a child should not be forced to endlessly suffer the parentless limbo of foster care. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987). Accordingly, we do not believe C.E.B. should be forced to suffer indefinitely in parentless limbo. Upon our review of the record, we find clear and convincing evidence C.E.B. cannot safely be returned to K.B.'s and C.B.'s custody.

The parents also contend there was insufficient evidence to establish they lacked the ability or willingness to respond to services. After reviewing the record we agree with the juvenile court's assessment. As previously noted, the past behavior of the parent is an important factor to consider in our determination. We believe K.B.'s and C.B.'s past lack of compliance with and receptiveness to social services is evidence of their lack of ability and desire to correct their problems. The record indicates that K.B. and C.B. have not complied with

or cooperated with their service agreements. They have resisted home visits by social workers. Most importantly, these parents continue to blame others for the problems in each of their children's lives. Consequently, we believe there was clear and convincing evidence that these parents lack the ability or willingness to respond to services.

We find sufficient evidence in the record to support the juvenile court's conclusions in all respects. For the above reasons, we affirm the decision of the juvenile court.

AFFIRMED.