IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

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IN THE INTEREST OF C.R.M., AND T.M.M. Children)

T.M. AND A.P.M., Parents,) 8-258 87-164

Appellants.)

Appeal from the Iowa District Court for Polk County (Juv. No. 7040-15) - Vincent M. Hanrahan, Judge.

Father and mother appeal the juvenile court's termination of their parental rights. **AFFIRMED.**

Peter Berger, Des Moines, for the appellant mother.

Craig Shannon, of Grefe & Sidney, Des Moines, for the appellant father.

George Arvidson, guardian ad litem, for the children.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Ray Blase, Assistant County Attorney, for the appellee State.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

Father and mother appeal the juvenile court's termination of their parental rights. The father contends there was not clear and convincing evidence that the children should not be returned to his custody and that he should be given additional time to improve his parenting deficiencies. The mother similarly argues. We affirm.

Appellate review of the juvenile court's proceeding is de novo. In re Interests of W.G., 349 N.W.2d 487, 491 (Iowa 1984). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses whom the court had the opportunity to observe, but we are not bound by those determinations. Id. at 491-92.

The oldest child, T.M.M., was adjudicated a child in need of assistance within the meaning of Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(d) (1985) as a result of two separate proceedings on March 18, 1986, and September 10, 1986, respectively. T.M.M. was ordered to be placed in foster care on May 6, 1986. C.R.M. was also adjudicated to be a child in need of assistance on March 18, 1986, within the meaning of Iowa Code section 232.2(6)(c)(2) (1985). C.R.M. was also ordered to be placed in foster care on May 6, 1986.

Parental rights may be terminated pursuant to Iowa Code section 232.116(5) if the court finds that (1) the child

has been adjudicated a child in need of assistance, (2) that custody of the child has been transferred from the child's parents to the Department of Human Services for at least twelve of the last eighteen months, and (3) that there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in Iowa Code section 232.102 (1985). The parents only dispute the third prong of these requirements.

We find that there is clear and convincing evidence that both T.M.M. and C.R.M. cannot be returned to their parent's custody because the mother admitted during the hearing that she could not protect the children from physical abuse. The majority of the evidence presented at the hearing supports her conclusion.

The mother and the father have a long history of emotional dependency upon one another. The evidence clearly shows that this dependency took precedence over the welfare of the children. The father was physically abusive toward T.M.M. The mother testified that fear motivated her acquiesence to her husband's abusive actions. The foster care specialist testified that the mother's passivity concerning the father's abusive activities was due to an abnormal dependency on her husband. The foster care specialist and the foster care worker both testified that they did not believe that the parents would be able to change their actions sufficiently in order to regain custody of their

children. Both parents have been offered numerous psychological and social services in order to remedy their problems over the last several years and have declined to participate. Additionally, both parents have not fulfilled their parent contract dated October 6, 1986.

The mother filed a second motion to continue prior to the hearing stating to the court that she had left the father, was currently residing at the family violence center, and requested a six-month continuance in order to fulfill her parenting responsibilities which she was unable to accomplish while living with the father. She states she lived in fear of her husband and was under his domination prior to the separation. She further states she is now willing to admit the incidents of physical abuse. The foster care specialist testified, as did the mother, that the mother still denies the incident of sexual abuse despite her presence during its occurrence. Both caseworkers stated that they are skeptical regarding the mother's recent attitude change because the parents have separated once previously unsuccessfully, the parents continue to be abnormally dependent upon one another, and they have refused psychological and emotional services until the eleventh hour. More importantly, the caseworkers testify, the children need a resolution to this matter because they have been in foster care long enough waiting for their parents to deal with their own problems; the children need

a stable environment. The trial court did not abuse its discretion in failing to grant a continuance in this case. In re T.D.H, 344 N.W.2d 268, 270-71 (Iowa App. 1983).

The father also requests more time in order to prove himself. The father did not testify in the juvenile court hearing to terminate his parental rights. However, his attorney questioned both caseworkers whether their recommendation to terminate parental rights would be changed if they were aware that days before the hearing the father had taken initial steps to avail himself of psychiatric and social services. Both foster care workers testified that such attempts would be a good beginning for the father, but would not change their recommendations based upon the extensive history of the father's noncompliance. Past behavior is an important factor to be considered by the court in terminating parental rights. In re M.H., 367 N.W.2d 275, 278 (Iowa App. 1985), In re C.W., 342 N.W.2d 885, 887 (Iowa App. 1983).

Finally, the mother argues that Iowa Code section 232.116(5) does not mandate a termination of parental rights. This is true. The statute gives discretionary authority to the juvenile court. Iowa Code section 232.116(5). However, the court's order in this matter is further bolstered by the clear and convincing evidence that it is in the children's best interest not to return them to

their parent's custody. In re L.P., 370 N.W.2d 839, 842-43 (Iowa App. 1985).

We therefore affirm the juvenile court's order terminating both parents' parental rights in T.M.M. and C.R.M. because the definitional grounds of "child in need of assistance" still exist. In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985).

AFFIRMED.