

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

IN THE INTERESTS OF S.J.)
and D.L.S., Minor Children,)

C.M., Mother,)

Appellant.)

9-258
89-162

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Appeal from the Iowa District (Juvenile) Court for Mahaska County (J6-275), Gene W. Glenn, Juvenile Referee.

The mother of two children appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Lance A. Grotewold of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

Greg Life, Oskaloosa, guardian ad litem for the children.

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

SCHLEGEL, J.

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C.M., the mother of two children, appeals a juvenile court order terminating her parental rights. She challenges the sufficiency of the evidence establishing that the children cannot be returned to her custody pursuant to Iowa Code section 232.116(5) (1987).

Appellate review of proceedings to terminate a parent-child relationship is de novo. 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, but we are not bound by these findings. Iowa R. App. P. 14(f)(7); Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977). Upon our de novo consideration of the record before us, we affirm the termination order.

The children in question are two boys, D.L.S. and S.J., born in 1980 and 1984, respectively. Each child has a different father and C.M. was not married to either of them. Neither father has been actively involved in his child's life in recent years. Both fathers' parental rights were terminated on grounds of abandonment.

The record in this case indicates that the Iowa Department of Human Services first became involved in this case in August of 1986, pursuant to allegations that the children had been physically abused. According to the child abuse report filed in September of 1986, C.M. had

recently married M.M. and was living with her sons, D.S. and S.J., and M.M.'s son, J.M. M.M. was a sometime transient with an alcohol problem and a history of sexual abuse problems.

The Department's report describes C.M.'s home life at the time as "extremely chaotic and unstable." Furthermore, the report notes that:

[T]he children are not supervised, not disciplined, physically abused, not fed, and live in inadequate shelter. This places all three children in danger. In summary, it is found there has been a failure to provide for these children's welfare and critical care needs. This failure to provide critical care needs can be documented to have continued as a pattern over an extended length of time.

On September 10, 1986, D.L.S. and S.J. were adjudicated in need of assistance on the grounds of physical abuse and neglect by M.M., and on the grounds of lack of supervision by C.M. In December, a dispositional hearing was held and both boys were placed in foster care. Upon review of the case in May of 1987, the juvenile court determined that although C.M. had obtained a divorce from M.M., and had maintained supervised visitation with the children, the evidence failed to establish that the children could be safely returned to her custody, due to her substance abuse problems. The court continued the children's stay in foster care.

The case was subsequently reviewed in November of 1987 and again in June of 1988. In both instances, the court

ordered that the children could not be safely returned to their mother's care, due in large part to C.M.'s inability to recognize her parenting deficiencies. According to a social worker's report filed by Iowa Children and Family Services prior to the November 1987 hearing, C.M. believed that her main problem with the children was due to M.M., and since she was divorcing him, she didn't have any more work to do on her parenting skills. She was described as an emotionally immature woman with little toleration of stress or conflict, and was prone to emotional outbursts which had a negative effect on the children. C.M. was also described as making minimal progress towards case plan goals, and could not obtain her own housing or a job. Subsequent follow-up reports indicate that C.M. became more resistant to both court-ordered action and recommended treatment for her sons, and placed the blame on others for the removal of her children.

In August of 1988, a petition for termination of parental rights was filed. On December 28, 1988, upon hearing, the juvenile court terminated C.M.'s parental rights, based upon findings by clear and convincing evidence, that D.L.S. was seriously mentally impaired and posed a danger to himself and others.

Iowa Code section 232.116(5) (1987) permits the juvenile court to terminate the parent-child relationship if: (1) the child has been adjudicated to be in need of

assistance; (2) the child has been placed out of the parent's custody for more than twelve of the last eighteen months; and (3) there is clear and convincing evidence that the child will suffer the harm or harms specified in Iowa Code section 232.2(6) (1987) if returned to the parent. In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). The types of harm specified in section 232.2(6) include physical abuse or neglect of a child and the harm caused by the parent's failure to exercise reasonable care in supervising the child. Proof of any one of the types of harm delineated in section 232.2(6) is sufficient to support termination. See id at 228.

In the case at bar, it is apparently uncontested that the first two conditions specified in section 232.116(5) have been met. The children were adjudicated in need of assistance on September 10, 1986, and legal custody of both children was transferred to the Iowa Department of Human Services for purposes of placement in foster care. C.M. does, however, contest the sufficiency of the proof offered in support of the juvenile court's determination that the third (3) condition has been met.

There are no hard and fast rules in determining the quantum of evidence necessary to meet the clear and convincing evidence standard of 232.116(5)(c), however certain general principles guide us in our review of the evidence. The best interests of the child are, as always,

of paramount importance, In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981), and we look to the child's long-range as well as immediate interests. "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 future care that parent is capable of providing." Id. It has also been recognized that our statutory termination provisions are preventative as well as remedial. They are designed "to prevent probable harm to a child and do not require delay until after the harm has occurred." In re Dameron, 306 N.W.2d at 745.

We agree with the trial court that clear and convincing evidence exists to support termination of C.M.'s parental rights. C.M. has a history of unstable relationships with abusive men. She also has a history of alcohol and drug abuse, although she now claims to have resolved those problems. There is evidence that she severely neglected the children's needs for nutrition and hygiene, and that she failed to protect the children from physical abuse by M.M. From the record it is apparent that she has little insight into her children's emotional and physical needs or into her own deficiencies as a parent. Since losing custody of the children, she has moved frequently, has failed to maintain employment, and has been arrested for shoplifting and for carrying a weapon.

These children should be afforded an opportunity to a life free from the emotional upset that has been caused and certainly will be caused by further association with a mother who fails to accept her parental responsibilities. The record in this case clearly and convincingly shows that the children would suffer harm if they were returned to the custody of C.M. We therefore affirm the juvenile court's termination order.

AFFIRMED.