IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1999-238 (9-462) / 99-0271
Filed November 10, 1999

IN THE INTEREST OF M.E.,
Minor Child.

T.T., Mother,
Appellant.

Appeal from the Iowa District Court for Hardin County, Peter B. Newell, District Associate Judge.

Mother appeals the termination of her parental rights to her child. She contends the court erred (1) in finding the circumstances that resulted in the original abuse or neglect continued to exist, (2) by applying an incorrect evidentiary standard in determining whether the child would suffer harm if returned home, and (3) in finding the child would suffer harm if he returned home. **AFFIRMED.**

James L. Beres of Sween & Beres, P.C., Eldora, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Richard Dunn, County Attorney, for appellee-State.

Robert Muhlenbruch of Muhlenbruch Law Office, Ackley, for minor child.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HECHT, J.

Mother, T.T. ("Tammy"), appeals the termination of her parental rights to her child, M.E. ("Matthew").[1] She contends the court erred in finding the circumstances that resulted in the original abuse or neglect continued to exist, by applying an incorrect evidentiary standard in determining whether the child would suffer harm if returned home, and in finding the child would suffer harm if he returned home. We affirm.

I. Factual Background and Proceedings. The State filed a petition to adjudicate Matthew as Child in Need of Assistance (CINA) on March 20, 1997, following a founded child abuse report. The report indicated Matthew, at age five and a half, was being inappropriately disciplined by his stepfather, Ed. Matthew was required to stand in a corner for long periods of time, do multiple pushups, and remain in a pushup position in the corner. Tammy admitted scratching and biting Matthew to show him what it was like to be scratched or bitten. She also admitted to backhanding him. In addition, the family home was found to be unsanitary and infested with cockroaches and lice. Ed and Tammy voluntarily agreed to place Matthew in foster care.

The CINA proceeding was held on May 2, 1997. At that time, Matthew was adjudicated a child in need of assistance. Matthew entered into individual counseling

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[1] The court also terminated the parental rights of Matthew's natural father, Clinton Brooks. Mr. Brooks was notified by publication of the termination action. However, his whereabouts are unknown and he has not appealed the termination of his parental rights.

and family counseling with Tammy and Ed. Tammy and Ed also started parenting skills classes, homemaker services, and supervised in-home visits with Matthew. During individual therapy, Matthew revealed he had been sexually abused by a teenage male caregiver while living in the parental home. Matthew has also been diagnosed with attention deficit disorder and requires regular medication to help control his behavior. The disposition of the CINA action occurred on July 17, 1997. The district court informed Tammy at that time of what she needed to do in order to have Matthew return to her home including participate with service providers and work as a parenting team with her husband, Ed.

The State petitioned to terminate Tammy's parental rights on October 27, 1998. The court heard evidence in this matter on December 22, 1998, and on February 2, 1999. On February 16, 1999, the district court found, while Tammy had tried to comply with the plan provided by the state, she continued only to make minimal progress. The district cou t also found Tammy and Ed have been abusive to the service providers trying to help the family. Ed remains unwilling to change his behavior toward Matthew. Matthew still has fears of physical abuse in the home and all service providers believe he would be in danger if returned to his parental home. Subsequently, the district court entered an order to terminate Tammy's parental rights with respect to Matthew pursuant to Iowa Code sections 232.116(1)(c) and (1)(e). Tammy appeals.

II. Standard of Review. We review proceedings to terminate a parent-child relationship de novo; we may review the facts as well as the law and adjudicate the parents' rights anew. *In re of M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

III. Termination of Parental Rights. Our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997); *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App.1996).

> 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.

R.K.B. at 601 (quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa App. 1993)). The grounds alleged for the termination of parental rights must by statute be proven by clear and convincing evidence. Iowa Code § 232.114(5)(c) (1999).

Parental rights may be terminated where the court has previously adjudged the child to be a child in need of assistance predicated upon a finding of physical abuse or neglect by a parent, services were subsequently offered to correct circumstances which led to the adjudication, and the circumstances which led to the adjudication continue to exist. Iowa Code § 232.116(1)(c) (1999). Tammy alleges the State failed

to establish by clear and convincing evidence circumstances resulting in the abuse or neglect to Matthew continue to exist in her home.

The circumstances which led to Matthew's CINA adjudication were physical abuse by his mother and inappropriate and extreme discipline by his stepfather. The cleanliness of the family home was also an issue. While there is some evidence in the record to demonstrate Tammy has made progress in her parenting skills, the weight of the evidence indicates her progress has been minimal. Both Tammy and Ed have resisted family therapy and homemaker services provided by the State. Matthew is in need of regular and consistent medication and the record indicates Tammy cannot be relied on to administer it appropriately. Tammy has failed to keep the home clean, and the children still residing with her in the home have continual head lice problems.

Matthew's stepfather, Ed, has made no progress with the services provided by the State. He has stated to several family therapists he has no desire to work on his relationship with Matthew. The current therapist for this family sees no hope for future reconciliation. Matthew still expresses fear of his stepfather even after two years out of the home. Although he has expressed a desire to go home, Matthew says he only wants to return because he knows he can lock his bedroom door to protect himself.

Matthew has been in placement outside the family home since May of 1997. The State has, through the provision of services to the family, made reasonable efforts to reunite Tammy and Matthew prior to the commencement of termination

proceedings. A parent does not have an unlimited amount of time in which to correct parenting deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa App. 1997) (citing *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990)). We must view this case with urgency because the statutory time limits of Iowa Code sections 232.116(1)(e) and 232.116(1)(g) have passed. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990); *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987). When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued. *J.L.W.*, 570 N.W.2d at 781. The record indicates the circumstances that existed at the time Matthew was removed from the home still exist. The requirements of section 232.116(1)(c) have been met. We affirm the district court's termination of Tammy's parental rights under this section.

Tammy also alleges the State did not prove by clear and convincing evidence Matthew would suffer harm if he returned home. To support this allegation, Tammy asserts the district court incorrectly applied the burden of proof under section 232.116(1)(e) by using a preponderance of the evidence standard rather than the "clear and convincing" standard as required by the section. Iowa Code section 232.116(1)(e) requires, among other things, proof of clear and convincing evidence the child cannot be returned home. The district court distinctly states:

> And finally, the Court finds that the State has established by clear and convincing evidence that at the present time the Child could not be safely returned to the parental home. . . . The State has established by

> clear and convincing evidence that ground for termination set out in 232.116[1](e).

Therefore, this court finds the district court did apply the correct burden of proof in terminating Tammy's parental rights pursuance to 232.116(1)(e).

Tammy also asserts the State did not prove by clear and convincing evidence Matthew was imminently likely to suffer harm if he returned home. The Iowa Supreme Court has determined the grounds for termination of parental rights under section 232.116(1)(e) are met if, after an adjudication that a child is in need of assistance and placement of the child for the statutory period, the definitional grounds of section 232.2(6) continue to exist. *In re of M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). Section 232.2(6)(c) defines a child in need of assistance as a child who has suffered or is imminently likely to suffer harmful effects as a result of either of the following: (1) mental injury caused by the acts of the child's parents or (2) the failure of the child's parent to exercise a reasonable degree of care in supervising the child. Tammy and Ed have made minimal progress in their ability to appropriately parent Matthew, given his needs. Matthew is still in fear of returning home. As discussed above, the district court properly concluded the circumstances that led to Matthew's CINA adjudication still exist today. Accordingly, we affirm the termination of Tammy's parental rights.

AFFIRMED.