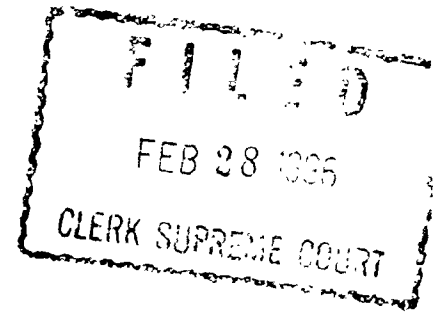


IN THE COURT OF APPEALS OF IOWA

No 6-049 / 95-1618



IN THE INTEREST OF D.W.P. and
R.M.P, Minor Children,

P.O., Mother,

Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister,
District Associate Judge.

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

E. Daniel O'Brien of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for
appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, Judy Shierbon, Assistant Attorney General, and Karla J. Henderson, Assistant
County Attorney, for appellee State.

Casey D. Jones, Cedar Rapids, guardian ad litem for minor children.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Patricia appeals the juvenile court order terminating her parental rights to her minor children David and Rosemary. We affirm.

Gary and Patricia are the parents of David, born July 13, 1987, and Rosemary (Rose), born October 22, 1989. David suffers from severe kidney problems which have forced him to endure frequent hospitalization and treatment throughout his childhood. In 1990 Gary and Patricia consented to foster care for David in light of his ongoing health problems. Because David's health problems require special care, Patricia acknowledges that she cannot adequately care for him and, as a result, does not contest the termination of her parental rights to him. David's foster mother is a pediatric intensive care nurse, and she and her husband intend to adopt David.

From the time of her birth until her foster care placement in March of 1993, Rose lived with and was cared for primarily by Patricia. In May 1992 the State filed a CINA petition on behalf of Rose. The supporting affidavit to that petition asserted that Rose was a child in need of assistance because she and Patricia were essentially homeless, living with various friends and out of Patricia's car. The affidavit also stated that Rose **appeared** to be poorly nourished, unclean, and in need of her immunizations. Although Patricia secured housing for herself and Rose in November 1992, they were again homeless by February 1993. At that time, the Iowa Department of Human Services expressed concern as to Rose's physical health as well Patricia's open

association with a known child sex abuser. In March 1993 Gary and Patricia stipulated to Rose's CINA adjudication, and Rose was placed in the same foster home with David.

While Rose was in foster care, Patricia was allowed supervised visitation and was given the opportunity to attend parenting classes. Her attendance at these visits and parenting sessions, however, was inconsistent. She attended only seven visits from January 1 to March 17, 1994, and did not see her children again until a single visit in late May of that year. At a December 1994 review hearing, the State reported that Patricia had failed to exercise any visitation since the May session and that her whereabouts were unknown. As a result, the State filed a termination petition.

At the termination hearing Patricia testified that the reason she missed significant visitation during 1994 was because she had been in Illinois for several months following a relative's funeral. She resumed her visitation after the termination petition was filed, though these visits often resulted in arguments and power struggles involving Patricia and both children. Further testimony indicated that Patricia had failed to take advantage of State services provided to improve her parenting and that she remained unable to provide a stable home. The juvenile court terminated both Gary's and Patricia's parental rights to David and Rose on August 31, 1995. Patricia appeals the termination of her parental rights to Rose only.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984) *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (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.

Our 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). In deciding what is best for the child we look to the child's long-range as well as immediate interests. We also look to the past performance of the parents because it is an indication of the quality of care the parent is capable of providing in the future. *In re A.M.S.*, 419 N.W.2d 723, 726 (Iowa 1988). We will not terminate parental rights pursuant to Iowa Code section 232.116(1) absent clear and convincing evidence the requirements of each provision have been met. *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982).

The juvenile court terminated Patricia's parental rights pursuant to Iowa Code section 232.116(1)(e)(1993). That section allows the juvenile court to order **termination of parental rights** if:

- (1) The child is four years of age or older;
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96;
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last

twelve consecutive months and any trial period at home has been less than thirty days:

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232 102.

Patricia contends the State failed to show by clear and convincing evidence that Rose cannot not be returned to her care. She claims her parenting skills have improved significantly and that, as a result, she is able to provide a stable home for herself and her daughter. We disagree.

Our careful review of the record reveals that Patricia has been unable to provide Rose with basic housing, nutritional, and developmental needs despite years of service. She has failed to maintain steady independent housing and has been unable to provide her daughter with such basic health needs as proper food and immunization. In addition to her inability to provide Rose with appropriate physical care, Patricia has also exercised poor judgment in allowing her daughter to have contact with known sex abusers on more than one occasion. These factors strongly indicate the likelihood Rose would experience serious harm if returned to her mother's care.

We are further influenced by Patricia's failure to maintain contact with Rose for extended **periods** of time. The record shows that Patricia only visited Rose seven times throughout 1994, with all but one of these visits taking place in the first three months of that year. During this period, Patricia not only severely limited her contact with her daughter but also avoided social services. As a result, Patricia's actions made it

impossible for her to show any sort of improvement in her parenting skills or her judgment in choosing companions for herself and her child. We can only conclude, therefore, that Patricia's parenting skills have not progressed to a point where returning Rose to her mother's care would be in the child's best interest.

Our de novo review of the record reveals clear and convincing evidence showing Patricia cannot adequately care for Rose. The statutory grounds for termination under section 232.116(1) have been met. We conclude it is in Rose's best interest to terminate Patricia's parental rights. The decision of the juvenile court is affirmed.

AFFIRMED.

Cady, J., concurs; Sackett, P.J., concurs specially without opinion.