

IN THE COURT OF APPEALS OF IOWA

No. 1-368 / 91-867

IN THE INTEREST OF S.O., B.O., E.O. and C.B.,
Minor Children.

L.O., Mother,
Appellant.

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FILED

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County,
Jane Mylrea, Juvenile Referee.

The mother appeals a juvenile court order terminating
her parental rights. **AFFIRMED IN PART, AND REVERSED IN
PART.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for
appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Judy Sheirbon,
Assistant Attorney General, for appellee State.

Mary Lynn Neuhas, Dubuque, as guardian ad litem for the
children.

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

OXBERGER, C.J.

The mother in this case is the parent of Sandy, Brenda, Chad, and Elizabeth. In April 1989 the children were removed from the mother's care following several sexual and physical abuse/neglect reports and by agreement of the parties. The reports indicated the father had physically and sexually abused the children and the mother had failed to protect the children or report the abuse. The mother also violated no contact orders by allowing the father access to the children.

In June 1988 the four children were adjudicated children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2). The children were then placed in foster care.

In March 1991 a petition for termination of parental rights was filed concerning the mother. The petition, as it relates to the mother, indicates she has not progressed in counseling and she is unable to adequately protect the children from future abuse. Following a hearing, the juvenile court terminated her parental rights. The court found the mother's rights should be terminated pursuant to Iowa Code sections 232.116(e) and (g). The mother has appealed the termination order.

TERMINATION OF PARENTAL RIGHTS REGARDING CHAD AND ELIZABETH: We first consider whether the mother's parental rights should be terminated to Chad and Elizabeth.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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.

The 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).

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.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

The mother asserts the juvenile court erred in finding there was clear and convincing evidence that it was in the best interests of the children to terminate her parental rights.

The court found the mother's parental rights should be terminated pursuant to Iowa Code section 232.116(e) and 232.116(g). These sections provide in part:

1. . . .the court may order the termination of both the parental rights with respect to a child on any of the following grounds:

e. The court finds that all of the following have occurred:

- (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 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, 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.

* * *

g. The court finds that all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) 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 at the present time.

The mother's only challenge to these statutory provisions is the sufficiency of the evidence to meet the clear and convincing standard. The history of this family has been ravaged by sexual abuse. There is no dispute the father has perpetrated serious offenses against the children. As a result of the father's contact, a no-contact order was issued by the court to protect the children from further physical and sexual abuse. It is

clear, from the record, the children would be in continuing and imminent risk of further sexual and physical abuse if subjected to the father's presence.

The court found the mother, having knowledge of the father's behavior, "continuously allowed [the father] back into the home . . . and has failed to recognize [the father] as a danger . . . [The mother] has been deceitful in failing to acknowledge [the father's] presence and has been in violation of the no-contact order as recently as March 1991."

The mother admits she has vacillated in her own contact with her ex-husband. There is evidence which indicates good reason for this woman to fear her ex-husband. The trial court noted the testimony by the mother that her ex-husband threatened to kill her and the children if she reported him. The ex-husband was imprisoned for a stabbing incident in the early 1980s. In light of the father's threats and past history of violence and abuse, we have considered whether the mother's conduct in permitting the father into the home, or not stating he was a danger, was undermined by a fear of endangering herself or her children. We find the following testimony of the mother revealing:

Q. Did [the father] have contact with the children then when he was not supposed to have contact with them? A. Yes, he was. He came in on Jackson Street there.

Q. And why did you allow him to have contact with the children then? A. He said he didn't have no place to go.

Q. And so you placed your children at risk in order to give him a place to stay? A. Yeah.

The mother knows her ex-husband has physically and sexually abused the children. To allow further contact was an unconscionable denial of a basic parental duty. The risk that this same decision would be made in the future is clearly established by her past pattern of conduct. Further, it is apparent from this testimony that her decision to allow such contact was not motivated by any fear of harm. We, therefore, find clear and convincing evidence the mother's parental rights should be terminated as to Chad and Elizabeth, and affirm the juvenile court on this matter.

TERMINATION OF THE PARENTAL RIGHTS REGARDING BRENDA AND SANDY: This court considers the evidence supporting termination of the mother's parental rights to Chad and Elizabeth, when considering the best interests of Brenda and Sandy. We are, however, faced with an additional issue regarding Brenda and Sandy. The record indicates both children are emotionally troubled and require therapy to overcome their history of abuse. Both children are currently receiving counseling therapy. The children's therapist and LSS social worker indicated termination of the mother's parental rights was not in the best interests of the children. They base their opinion on the level of bonding and lack of potential adoptability of the children. Concern was also expressed that any therapeutic

progress which has been made could end and the children might regress. The therapist testified that even if the two girls could not be returned to their mother's care, they should be placed in a home where they could have continuing contact with her. We accept the therapist's conclusion. We find Brenda and Sandy cannot be returned to their mother's custody. There is, however, sufficient evidence that a continued contact between Brenda and Sandy is in their best interests. We direct that Brenda and Sandy be placed in such custodial care as to allow their mother regular visitation with them. Where the possibility of adoption for either Brenda or Sandy arises, action should then be taken to consider the advantages and disadvantages of terminating the mother's parental rights. We therefore reverse the juvenile court's termination of the mother's parental rights as to Brenda and Sandy.

COSTS: Costs are taxed to the appellee.

AFFIRMED IN PART, AND REVERSED IN PART.