FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF K.E.M. and E.E.M., Children,

A.M., Mother,

Appellant.

8-450
88-778

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Appeal from the Iowa District Court for Wapello County (No. JT3-11), Gene W. Glenn, Juvenile Referee.

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

John R. Webber III of McKay & Moreland, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General; Katherine S. Miller-Todd, Assistant Attorney General; and R. T. Starken, Assistant Wapello County Attorney, for appellee State.

Thomas F. Kintigh of Griffin, Dew & Kintigh, Ottumwa, guardian ad litem for the children.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

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Mother appeals the juvenile court's termination of her parental rights. While conceding the first two requirements of Iowa Code section 232.116(5), she contends the juvenile court erred in finding clear and convincing evidence that the two children, K.E.M. and E.E.M., could not be returned to her custody. Additionally, she contends the juvenile referee erred in not recusing himself from hearing the termination proceeding. We affirm.

Appellate review of termination proceedings is de novo. In re D.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, but we are not bound by those determinations. Id. at 491-92.

K.E.M. was born on July 6, 1984, and E.E.M. was born on June 23, 1982. Both children were adjudicated child[ren] in need of assistance within the meaning of Iowa Code section 232.2(6)(c)(2) on August 21, 1985, and placed in foster care through the Department of Human Services. The juvenile court found that the mother failed to make appropriate arrangements for the care of her children when she left them at the baby-sitter for approximately eight days without any notification concerning her whereabouts, and without provisions for food, medical services, etc. On November 6, 1985, the court ordered legal custody returned

to the mother and further ordered her to attend infant development classes, obtain her G.E.D. or employment, cooperate with day care services, and participate in homemaker services. On May 16, 1986, the court again ordered the children be placed in foster care because the mother had not followed through with ordered services and had failed to be available as necessary to care for the children. Weeks later, the mother again was ordered to participate in services and receive medical treatment for a contagious disease. On June 9, 1987, the juvenile court ordered parental right termination proceedings be commenced because the mother had not visited her children for one year and had failed to obtain court-ordered services.

Sometime in September of 1986, the mother moved to Tulsa, Oklahoma, where she currently resides with the father of her third child born subsequent to her leaving the state of Iowa. The natural father of K.E.M. and E.E.M. lost his parental rights in the underlying hearing. He did not appeal.

Parental rights may be terminated if the court finds that a child has been adjudicated a child in need of assistance, that the custody of the child has been transferred from the child's parents to the Department of Human Services for at least twelve of the preceding eighteen months, and 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. Iowa Code § 232.116(5) (1987). The mother only disputes the third prong of these requirements.

We find there is clear and convincing evidence that K.E.M. and E.E.M. cannot be returned to their mother's custody because the mother has neglected her children and has failed to exercise a reasonable degree of care in supervising the children.

Both children were left at the baby-sitter's for a continuous period of approximately eight days in 1985. The mother did not communicate to the children's caretaker where she would be staying or leave any monetary provisions for food, directions for medical services, etc. Three months later, the mother was able to regain custody of the children for a short time. However, she lost that right a second time when she failed to be at home to receive her children from day care and continued to refuse rehabilitative services. Subsequent to that incident, the mother moved out of state and had little, if any, contact with the children.

The mother asserts the Department of Human Services has failed to conduct any investigation regarding her ability to provide for the children. We find the evidence states otherwise. The Iowa Department of Human Services, upon learning about the mother's move to Oklahoma, contacted the authorities in that state to complete a home visit and

investigation. The sister agency in Oklahoma declined to conduct an investigation because they could not locate the mother. Historically, the mother has moved on numerous occasions without notifying the department of her new address. Unfortunately, the record is replete with instances where the mother has made no attempt to cooperate with the department. She has gone for lengthy periods of time without showing any interest in her children at all. It is not the department's responsibility to doggedly pursue the mother in her travels. As the natural parent of these two children, it was her duty to fulfill those rehabilitative requirements ordered by the court and to take the initiative with the department to regain custody of her children. She failed on both counts. Such actions translate into a lack of interest, which most unfortunately was understood by her children. K.E.M. and E.E.M. need not wait endlessly for their mother to accept this responsibility. In the Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). We are not here to punish the mother. But we must determine what is in the best interest of the children. In the Interest of J.S., 427 N.W.2d 162, 163 (Iowa 1988). The parent's past performance is a reliable indicator of future actions. Id. From May 16, 1986, until April 22, 1988, the mother had more than adequate opportunity to cooperate with the department and the courts in receiving rehabilitative services, to visit her

children, to show some interest in their situation. She cannot now complain that the department is unaware of her present situation when she refuses to make such information available to them.

Finally, the mother contends the juvenile referee was under a duty to recuse himself from hearing the termination proceeding after ordered the State to file the termination petition. This argument is without merit. Iowa Code sections 232.102(7) and 232.111(2) clearly give the juvenile court referee authority to act in this manner. The referee was properly carrying out his statutory responsibilities. The appellant has cited no objective instance of prejudice to convince us otherwise.

Therefore, we affirm the juvenile court's order terminating the mother's parental rights in K.E.M. and E.E.M. because the definitional grounds of "child in need of assistance" still exist; specifically, the children continue to run the risk of inadequate supervision, neglect, and resultant emotional abuse.

Costs are taxed to the appellant.

AFFIRMED.