FILED
JUN 29 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-218 / 92-1817

000205

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

D.J.S. and **A.S.**, Mother and Father,

Appellants.

Appeal from the Iowa District Court for Benton County, Patrick R. Grady, Associate Juvenile Judge.

D.J.S. and A.S. appeal from the juvenile court's termination of their parental rights with regard to their minor child M.E.S. **AFFIRMED.**

James T. Peters of Ristvedt & Peters, P.C., Independence, for appellant mother.

Crystal L. Usher, Cedar Rapids, for appellant father.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy A. Sheirbon, Assistant Attorney General; and Theresa Seeberger, County Attorney, for appellee State.

Leslie E. Stokke, Cedar Rapids, guardian ad litem for minor child.

Heard by Sackett, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

000206

HABHAB, J.

D.J.S., the mother, and A.S., the father, appeal from the juvenile court's termination of their parental rights regarding M.E.S., born May 31, 1989. Both parents contend the State failed to make reasonable efforts to reunify this family. A.S. also contends there was not clear and convincing evidence that M.E.S. would suffer harm if returned to his custody. D.J.S. claims there was not clear and convincing evidence she had deserted and abandoned M.E.S. and that termination of her parental rights was not in the best interest of the child.

On July 17, 1990, M.E.S. was removed from the parental home and placed in foster care due to the dangerous condition of the home. On August 7, 1990, the parties stipulated that M.E.S. was a child in need of assistance ("CINA") pursuant to Iowa Code sections 232.2(6)(b), (c), and (g).

On September 4, 1990, a contested dispositional hearing was held. The court found the child would continue to be at risk of suffering injury due to the condition of the home. The court continued the child's placement in foster care. In the hope of reunifying the family, D.J.S. and A.S. were given hands-on parenting services during their supervised visitations.

Sometime in September of 1990, D.J.S. and A.S. separated and D.J.S. moved to Cedar Rapids.

On October 22, 1991, the parties agreed that the child should remain in foster care. In April 1992, the parties again agreed with continued foster care, but A.S. requested expanded visitation. On May 22, 1992, a petition to terminate parental rights was filed. On October 19, 1992 the juvenile court entered its order terminating D.J.S.'s rights pursuant to Iowa Code sections 232.116(1)(b), (d) and both parents' rights pursuant to Iowa Code section 232.116(1)(g).

D.J.S. and A.S. appeal. We affirm.

Our 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.

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 Dameron, 306 N.W.2d at 745).

000208

I. **Termination of Father's Parental Rights.**

Iowa Code section 232.116(1)(g) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds 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, . . . 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.

Iowa Code §232.116(1)(g) (1991).

There is no dispute in the record that M.E.S. is three years of age, that she has been adjudicated as being in need of assistance and that her custody has been transferred from her parents pursuant to Iowa Code section 232.102 for the statutorily required time period. The parents contend the last element of this section has not been met.

The father contends he can now provide for his child. We find nothing in the record to support this assertion. In addition, it would serve little, if any, purpose for us to detail the conditions this child was subjected to. Paula Welsh of Cedar Valley Family Counseling testified at great length in this respect. The combination of the father's inability to maintain a safe home and his lack of

basic parenting skills supports the juvenile court's conclusion this child would continue to be a child in need of assistance if returned to his home.

A.S. also argues that DHS failed to make reasonable efforts to reunify the family and provide services as required by Iowa Code section 232.102(5) (1991). He points to a gap in services provided by DHS, the changes in social workers and therapists, and other delays which have made reunification in this case more difficult.

Both parents were receiving services and supervised visitation through Tanger Place until Department of Human Services ("DHS") budget cuts in July 1991 terminated these programs. The caseworker with whom they had been working was also laid off in August of 1991.

A.S. testified that from July 1991 until the end of September, there were no in-home services provided to him and visits were interrupted because of the DHS budget problems. We find this unfortunate and we note that A.S. suffered a setback as a result. However, we find A.S. was given the opportunity to rebuild his relationship with his daughter and his parenting and housekeeping skills. From September 1991 until the termination hearing, he was provided with hands-on parenting instruction, as well as specific projects and suggestions on how to make his apartment safe for his daughter.

Upon review of the record as a whole, we agree with the juvenile court in its findings that even with more

000210

consistent services provided by persons with whom A.S. had a rapport, A.S. would still have insufficient skills to parent M.E.S.

II. **Termination of the Mother's Parental Rights.**

We also find clear and convincing evidence to support the termination of the mother's parental rights under Iowa Code section 232.116(1)(g) (1991).

The mother testified at the termination hearing that she could not care for M.E.S. at this time. She indicated she had to finish school and get a job first. She has not requested visitation with the child or participated in services since October 1991. She blames this on the interruption of services, combined with the recommendation in October 4, 1991, by Paula Welsh, a therapist at Cedar Valley Counseling, that she consider terminating her parental rights. In January 1992, Antonio Montoya, of DHS attempted to schedule parenting skills reviews with D.J.S. She indicated she was busy and would call. Mr. Montoya never heard from her.

Although we find unfortunate the break in services that occurred from July 1991 to October 1991, we find D.J.S. has not taken advantage of the services offered to her from October 1991 through the termination hearings in July and September 1992. We therefore reject her argument that the State has not made reasonable efforts to provide services to her for the purposes of reunification.

We need not decide whether the other grounds existed for terminating the mother's parental rights because we find the requirements of Iowa Code section 232.116(1)(g) (1991) have been met.

III. Best Interests of the Child.

Having determined there is clear and convincing evidence to support the termination, we look now to whether the best interests of the child would be served by terminating A.S.'s and D.J.S.'s parental rights.

Our supreme court has said that a child should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). To continue to keep children in temporary foster homes is not in their best interests. In re J.L.P., 449 N.W.2d 349, 353 (Iowa 1989). The amount of time normally for children to be in foster care is prescribed by the termination statute.

It is unlikely that either of these parents in the foreseeable future will be able to provide the care necessary for their child. We agree with the juvenile court that the best interest of M.E.S. would be served by terminating the parental rights of A.S. and D.J.S. We affirm the juvenile court's decision to terminate A.S.'s and D.J.S.'s parental rights.

AFFIRMED.

Keefe, S.J., concurs; Sackett, J., specially concurs without opinion.