FILED
OCT 20 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF K.F., A Child,
K.F., Mother,
Appellant.

8-414
88-628

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Appeal from the Iowa District (Juvenile) Court for Scott County (J(C)5411-1285), Arlen J. Van Zee, District Associate Judge.

The mother of a child appeals from the termination of her parental rights. **REVERSED AND REMANDED.**

Bobbi M. Alpers, Davenport, for appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

Gary D. McKenrick and Alan R. Havercamp, Davenport, for the child.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ., but considered en banc.

HAYDEN, J. 37

In this case the mother appeals from the termination of her parental rights to her natural daughter. She challenges the sufficiency of the evidence to establish the child cannot safely be returned to her care. She also believes the juvenile court should have avoided termination by invoking Iowa Code section 232.116(3)(c), which permits the court to not order an otherwise warranted termination if it would be detrimental to the child due to the closeness of the parent-child relationship. Finally, she contends the juvenile court erred by admitting into evidence the written report of a social worker who was not present in court to testify.

I.

The child, K.F., was born in December of 1978. Her mother is divorced and has been a single parent throughout the larger percentage of time her children have been growing up. K.F. also has two brothers, both of college age or older. Her father has had little role in his daughter's life and the juvenile court's termination of his parental rights is of no relevance here.

The mother suffers from a mental illness diagnosed as chronic schizophrenia, paranoid type. Her treating psychiatrist has prescribed the drug prolixin, which is taken via injection. She is currently taking her medication voluntarily, however evidence indicates a

history of sporadic compliance with doctor-prescribed medication when she is on voluntary status.

When the mother's symptoms are in remission, which testimony indicates they now are, or are controlled by medicine, she has shown herself to be a loving and affectionate parent. However, when the mother's symptoms are present, she engages in bizarre and inappropriate behavior, suffering predominantly from delusions which she has on occasion communicated to her daughter. There is no evidence that these delusions have ever led to physical abuse of the child, or that they have been directed toward the child. There is evidence the child is sometimes confused and frightened by the mother's bizarre behavior.

The child has been in foster care since December 1985. During this time the mother has engaged in regular weekly visits. These visits for the most part, have indicated a mutually loving relationship between the mother and daughter, and appropriate behavior by the mother except in a few instances where her disease was at an acute stage.

The child has also maintained a similar relationship with her two older brothers through correspondence and holiday visits. Despite geographic separation, the brothers have visited their sister in foster home placement and have indicated in this proceeding a desire to continue their relationship with their sister no matter the outcome here.

In December 1987 the State filed a petition to terminate the mother's parental rights. After a hearing, the juvenile court terminated the mother's parental rights on the grounds stated in Iowa Code section 232.116(1)(e). It's from this order which the mother now appeals.

II.

As her basis for appeal, the mother argues the State did not meet its burden of establishing by clear and convincing evidence the child cannot be safely returned to her custody. She also contends the juvenile court should have followed Iowa code section 232.116(3)(c) which permits the court to avoid an otherwise warranted termination if it finds the termination would be detrimental to the child due to the closeness of the parent-child relationship. She also argues the juvenile court erred by admitting into evidence the written report of a social worker who did not testify. On appeal, we review parent-child terminations de novo. In Interest of D.T., 418 N.W.2d 355 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

III.

We first address the issue of whether or not the juvenile court's determination the child cannot be returned to her mother was supported by clear and convincing evidence.

As always, central to our determination of this matter is the best interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child receives minimally adequate care and treatment and will intercede when parents abdicate their responsibility. Id. The State may evoke the rights of parents if the allegations are proven by clear and convincing evidence. Iowa Code § 232.116(1)(e) (Supp. 1987). In making this determination, not only may the court look at the past behavior of the parent, but it is an important factor. In Interest of M.H., 367 N.W.2d 275, 276 (Iowa App. 1985). We look at the children's long-range and immediate interests and consider what the future could hold for the child if returned to the parent. Id. We may obtain insight for this determination from evidence of the parents' past performance, for that behavior may be indicative of the quality of the future care the parent is capable of providing. Interest of Dameron, 306 N.W.2d at 745. Iowa statutory termination provisions have been construed as preventative as well as remedial and thus, require action to prevent possible harm to a child before harm may occur. Dameron, 306 N.W.2d at 745.

Our painstaking review of the record convinces us the State has not shown by clear and convincing evidence the best interests of the child, both at the present time and

in the future, will be better served if the mother's parental rights are terminated. In short, we determine the juvenile court lacked sufficient evidence in this record to terminate the parental rights.

The mother of the child is a caring person who has a warm and loving relationship with her nine-year-old daughter. No evidence was presented indicating the mother ever subjected her daughter to any physical or sexual abuse. In addition, evidence indicates the mother is an excellent housekeeper and served as a very good hostess to others during the weekly visitation sessions with her daughter and that she is capable of managing her own affairs.

The State's primary argument for termination is grounded on the mother's recurring mental illness. The issue here is not an accusation of abuse or typical forms of parental neglect, but whether a parent who has a mental illness should be allowed to have a child in his or her care and custody. The mental disability of a parent, standing alone, is not sufficient reason for the termination of the parent-child relationship. In Interest of O'Neal, 303 N.W.2d 414, 422 (Iowa 1981). It may be a contributing factor to the inability to perform the duties of a parent, and as such, is a proper factor to consider in determining whether a child is neglected to the point where their interests and welfare require termination of the parent-child relationship. Id.

The State relies primarily on the testimony of private social workers contracted to handle this case by the Iowa Department of Human Services (DHS). Collectively, their testimony indicated a belief the mother does not have the ability to parent this child and limited observations concluding the mother's condition was not improving. However, all conceded a loving relationship existed between mother and daughter and none could cite specific recent occurrences of inappropriate behavior by the mother relating to her daughter.

On the other hand, the mother's treating psychiatrist, Dr. Chang, testified the mother voluntarily takes her weekly injections of prolixin and that he has witnessed steady improvement in her illness since June of 1987. He testified the illness is currently in "remission" and for that reason, he has decreased the prescribed dosage of prolixin. In addition, Dr. Chang indicated if the mother's progress remains constant, he sees no reason why she should not be able to once again take over the day-to-day care of her daughter with the help of certain support systems.

The child, described in testimony as having an above-average intelligence and creativity, has also voiced a desire to continue a relationship with both her mother and her brothers. There is no dispute in the record the contact between the child and her brothers has been a positive influence on her life. If we terminate the

mother's parental rights today, no assurance can be made this close sibling relationship could continue.

The State argues the child should not be forced to endlessly dwell for unnecessary periods of time in foster care." Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). We agree. However, in this case it would be unfair to terminate the parental rights at this time. The child has spent nearly four and one-half years in foster care waiting to reestablish a home with her mother. However, just when it appears the mother may be getting her life back on track and her child, already nine, is reaching an age where she may be able to understand her mother's illness, the State chooses to file a petition for termination. From this record, we cannot say the mother will not be capable in the future of adequately administering to the needs of her daughter, and thus we must reverse the order of the juvenile court. Because we have chosen to reverse on this issue, we do not address the other issues presented on this appeal.

REVERSED AND REMANDED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting) 11

I would affirm the trial court in its entirety.