FILED
JAN 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-628 / 93-798

IN THE INTEREST OF A.F., A Minor Child,

T.G., Mother,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, Judge.

Mother appeals the termination of her parental rights. **AFFIRMED.**

Mary K. Hoefer of Mears Law Office, Iowa City, for appellant.

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

Margaret T. Lainson of Meardon, Sueppel, Downer & Hayes, P.L.C., Iowa City, for appellee-father.

Constance Stannard, Iowa City, for appellee-minor child.

Heard by Oxberger, C.J., Sackett, J., and Critelli, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

CRITELLI, S.J.

Tammy is the mother of Alivia. She has never been married to, and does not reside with, Alivia's father, Chris. Tammy has borderline intellectual functioning and has a serious personality disorder, which manifests itself in explosions of temper and significant problems in self control. Tammy was receiving services from the Department of Human Services (DHS) before Alivia's birth on May 2, 1991. Those services included independent living skills training and parenting skills training and education. Following Alivia's birth, services to Tammy increased.

On December 5, 1991, Alivia was adjudicated a child in need of assistance (CINA) after Tammy had left her with an inappropriate baby-sitter, resulting in a founded child abuse report. This baby-sitter was a mildly-retarded ten-year-old. That absence by Tammy was to spend three hours with an upset friend.

Alivia remained in Tammy's care, but under the protective supervision of DHS. That placement was continued following a dispositional hearing on January 22, 1992. Tammy was to allow liberal visitation between Alivia and Chris and was to cooperate with service providers.

On March 11, 1992, Chris filed an application for a hearing, alleging that Tammy had refused to permit visitation. On April 9, 1992, the court ordered that Tammy allow visitation to take place. Later that day, Tammy refused to allow Chris to visit with Alivia.

On April 16, 1992, the State filed an application for emergency removal of Alivia from Tammy's home. Alivia's baby-sitter had agreed to watch Alivia until midnight. When Tammy had not returned for her daughter by the following morning, the baby-sitter contacted service providers. An emergency order was issued and Alivia was placed in foster care. In that order, the juvenile court noted that Tammy was refusing all efforts to comply with the case permanency plan and court orders.

On June 12, 1992, a hearing was held on the State's motion to modify prior dispositional orders. Again, the court noted that Tammy was not cooperating with service providers. Tammy was planning a two-month "vacation" in Louisiana and had had only two visits with Alivia since her removal. The order for removal was on April 16, 1992, and she only visited the child on May 27 and June 10. Custody was placed with DHS for purposes of foster care.

On November 11, 1992, the State filed a petition to terminate the parental rights of Tammy and Chris. A hearing was held on March 9 and 10, 1993. At the time of the termination hearing, the State sought a continuance on the termination of Chris's parental rights.

Testimony showed that services provided to Tammy included visiting nurses, the services of an organization which assisted developmentally disabled adults (FACT), social workers, and a human service agency that specializes in assisting children and adults with disabilities (Systems

Unlimited). Tammy is resentful and resistant to these services. Tammy has inadequate concepts of parenting skills such as safety, nutrition, behavioral management, and child development. Tammy had not visited Alivia since the end of January 1993, and a lack of bonding was evident. She interferes with the relationship between Alivia and Chris. Following visits with Tammy, Alivia is self-abusive. The juvenile court ordered termination of Tammy's parental rights and granted Chris's motion to dismiss the termination proceedings against him.

Tammy appeals. Relying on In re N.M., 491 N.W.2d 153 (Iowa 1992), she contends that since it is likely Chris will gain custody of Alivia, it was inappropriate for the juvenile court to terminate her parental rights. She claims that the issue should have been whether she could be a suitable noncustodial parent. She also contends that the State failed to appropriately accommodate her disabilities.

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.

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).

Tammy's contention that termination was improper and inappropriate because Chris's parental rights were not terminated and it is contemplated that he will receive custody of Alivia is without merit.

That issue was legally resolved in In re N.M., 491 N.W.2d 153 (Iowa 1992). That very issue was considered by the court. The parental rights of one parent can be terminated when the child is in the custody of the other parent. Id. at 155. Subparagraph (2) of Iowa Code section 232.116(1)(d), "The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months," does not require that custody had to be transferred from both parents for placement before termination could occur. Id.

The trial court did not apply an erroneous test or standard in terminating Tammy's parental rights. It held her to the same test as any parent who might anticipate regaining custody in the future and she failed.

The opinion in In re N.M. does not carve out or create any different status for the parent sought to be terminated just because return of custody to the other parent is contemplated. Id.

Termination is proper under Iowa Code section 232.116(1)(d) (1991) if the state proves:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.
>
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

Elements (1) and (2) are not really disputed. Element (3) is at issue. When she had Alivia in her custody, Tammy refused all help offered to her to comply with the appropriate Case Permanency Plan concerning the nutritional needs of the child, interaction with the child, and the child's health protection.

She has an uncontrollable temper, particularly directed towards the child's father. Her actions have made it necessary for the police to be called and charges filed

against her. She demanded that the child "learn to lay still," yanked at the child's leg, inappropriately spanked the child, and called her a "bitch." She threw the child's ear medication container and broke it and also threw her own eyeglasses and broke them, all in a fit of anger.

Her visits with the child have been infrequent, spontaneous, and at her (Tammy's) convenience. She resists authority and the help of all care providers. This attitude is consistent with her personality disorder and borderline functioning.

Dr. Jacob Sines opined that her condition might improve or calm down when Tammy is thirty-five or forty years old. Alivia cannot wait that long, and we will not require her to do so. Dr. Sines also indicated that a supervisory person should always be around when Tammy is with Alivia.

In summary, the only contested requirement of section 232.116(1)(d), that being subparagraph (3), has been satisfied by clear and convincing evidence.

Tammy also contends the State failed to accommodate her disability. Such efforts are required by section 232.116(3)(e) of the Code.

Tammy also fails on this issue. This record is replete with efforts made and offered to her to assist her in becoming the best parent she could be under her particular circumstances. Her adamant refusal to accept the efforts is legion in this record. In fact, her explosive

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interludes were sometimes triggered when such efforts were made.

We find no merit in any of the contentions of Tammy, and we affirm the judgment of the district court.

AFFIRMED.