IN THE COURT OF APPEALS OF IOWA

No. 1-471 / 91-705

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CLERK SUPREME COURT

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IN THE INTEREST OF C.M., A Minor Child.

D.M.,

Mother-Appellant/Cross-Appellee.

STATE OF IOWA,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Lyon County, Cameron B. Arnold, District Associate Judge.

The natural mother appeals from the termination of her parental rights. The State cross-appeals. **AFFIRMED AS MODIFIED.**

Ray Sullins, Des Moines, for appellant mother.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; and Charles K. Phillips, Assistant Attorney General, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

C.M. was born in 1981. Her natural father's parental rights were terminated in 1981. Before C.M. was born, her mother, D.M., was adjudged to be mentally incompetent and committed to the Cherokee Mental Health Institute. In September of 1980, D.M. was moved to a nursing home in an attempt to protect C.M., her yet unborn child, from the effects of D.M.'s substance abuse. When C.M. was born, she was adjudicated a child in need of assistance because D.M. was found to be incapable of adequately supervising her. As a result, C.M. was placed in foster care where she remained for about two years. Eventually, she was returned to her mother, but in December of 1988, an emergency removal occurred when C.M. was discovered to have been left alone while her mother went to Sioux City. Later in the month, it was stipulated that C.M. was in need of assistance. Finally, on May 4, 1989, having once again been removed from the home, C.M. was adjudicated to be a child in need of assistance. C.M. was again placed in foster care. In January of 1990, the case was reviewed, and C.M. was ordered to remain in foster care. She was examined by a psychiatrist and diagnosed with psychological problems

On June 11, 1990, the State filed a petition to terminate D.M.'s parental rights. At trial, C.M. was ten years old. The court found her to be a bright child. In many respects, she had assumed the role of her mother's

caretaker. D.M. has been diagnosed as a schizophrenic with borderline intellectual functioning. She has been found to suffer an attention deficit disorder which makes it very difficult for her to follow through with anything necessary in the orderly maintenance of the family home. As such, her home is extremely dirty to the point of being unhealthful. D.M. has also been hospitalized numerous times for mental health reasons, and she has a substance abuse problem.

The trial court found D.M.'s parenting skills to have been severely lacking in the past and found no reason to believe her skills had improved. Accordingly, the trial court found the State had shown by clear and convincing evidence that C.M. could not be returned to D.M.'s care.

Believing that long-term foster care would leave the child in limbo, the court terminated D.M.'s parental rights pursuant to Iowa Code section 232.116(1)(e)(1989). The court also ordered that contact between C.M. and D.M. be permitted in the future under the direction of the Iowa Department of Human Services (DHS). However, the trial court did not appoint a guardian for the child.

D.M. appeals. The State cross-appeals.

I. Termination. 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 (1985). We give weight to the juvenile court's factual findings, 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); see In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

The relevant facts in this case are essentially undisputed. The trial court found these facts constituted clear and convincing evidence that at the time of the hearing C.M. could not be returned to the custody of her mother as provided in Iowa Code section 232.102. See Iowa Code § 232.116(1)(e)(4)(1989). A child cannot be returned home within the meaning of Iowa Code section 232.102 if such a return would place the child in danger of any harm that would warrant a new child in need of assistance adjudication. On our review, we affirm the trial court's decision to terminate D.M.'s parental rights.

The essence of the appellant's three-page argument for reversal is that D.M. "should be afforded services, as she

ha[s] been for many years, to help her compensate for her deficiencies and maintain her parental relationship with C.M." The appellant further states "It appears that what happened in this case was that everyone got tired of the case, projected problems into the future, and decided to terminate parental rights on that basis."

The State argues that D.M. has been given assistance for the past ten years, but has shown no improvement or any capacity for improvement in her parenting skills. C.M. is being harmed by the lack of permanency in her life, and C.M. cannot be returned to her mother's care.

In her short lifetime, C.M. has already been adjudicated a child in need of assistance and removed from D.M.'s home three times. It has been the goal of the DHS for the past ten years to help D.M. improve her parenting skills to the level necessary to adequately care for her daughter. Tragically, however, it is now fully apparent that D.M.'s psychological condition renders this goal impracticable.

Ten years is enough. D.M. has been in and out of mental health institutions for the past ten years. She has abused prescription and nonprescription drugs for the same period of time.

During the portion of the past decade that C.M. was not in foster care, D.M. repeatedly failed to adequately supervise her. C.M. has been found playing on the highway. She has been left at home alone for an extended

period of time. While in her mother's care, C.M. has failed to attend school regularly. Even D.M.'s ability to provide adequate food and shelter for C.M. is suspect.

When D.M. has supervised her, her methods have often been inappropriate and abusive. D.M. has slapped C.M., screamed at her, and apparently pinched her hard enough to leave marks. As a result of this tumultuous childhood, C.M. also now exhibits psychological problems referred to as "an adjustment disorder with mixed emotional features."

From the record before us, it is apparent that C.M. is in dire need of a sense of stability and permanency. That need cannot be met by returning C.M. to her mother. Neither should C.M. be forced to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). While the law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skill, In re A.C., 415 N.W.2d at 613, C.M. need not wait forever for her mother to be cured of her psychological ailments. See In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

It must be remembered that, although there exists a parental interest in the integrity of the family unit, Dameron, 306 N.W.2d at 745, our primary consideration is the best interest of the child. Id.; In re N.H. & C.H., 383 N.W.2d 570, 572 (Iowa 1986). In the case at bar, it is apparent that the mother's tragic disease has set these weighty interests at odds. In these unfortunate

situations, the State, charged with the duty to see that every child within its borders receives proper care, must intercede to prevent probable harm to the child. See In re A.T., 433 N.W.2d 64, 66 (Iowa 1988).

D.M.'s past performance, indicative as it is of her probable future performance, demonstrates that C.M. would suffer emotionally and physically if returned to D.M.'s care. We do not believe that anything has transpired, since C.M. was last removed from D.M.'s care, which would weaken the link between D.M.'s past and her probable future performance. We find the State has proven that D.M. has failed to show any improvement or any capacity for improvement in her parenting abilities. As such, we find the State has met its burden of proof and affirm the trial court's decision to terminate D.M.'s parental rights.

II. **Continuing Contact.** On cross-appeal, the State contends the trial court erred in ordering the DHS to direct continuing contact between C.M. and D.M. The trial court in its findings of fact states that "all parties agree that some contact, even following termination of parental rights, would be beneficial to both parties." On appeal, the State does not seem to challenge this factual finding.

Rather, the State asserts that the order, to the extent it is read to bind prospective adoptive parents, is beyond the trial court's jurisdiction. See generally In re A.C., 428 N.W.2d 297 (Iowa 1988)(statutorily authorized

grandparent visitation rights terminate upon adoption); Matter of Adoption of Gardiner, 287 N.W.2d 555 (Iowa 1980)("fresh start" for child).

However, the State admits that "[s]uch contact would obviously be feasible while the child is in the guardianship of the Department or some other pre-adoptive place, and is likely to be possible in the post-adoptive setting as well, assuming a flexible adoptive family."

The DHS was ordered to direct such visitation. Surely the DHS, in directing the visitation, can reconcile the instruction given by the order and the instruction given by case law. We affirm the trial court's order and see no reason that it need be read so broadly as to make it contrary to law.

III. Guardian. Pursuant to Iowa Code section 232.117(3)(1991), we transfer the guardianship and custody of C.M. to the Department of Human Services.

For all the reasons stated, the judgment of the district court is affirmed as modified.

AFFIRMED AS MODIFIED.

Habhab, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I cannot agree. The majority is affirming an order terminating the parental rights of a mother to a ten-year-old child. The mother has had substantial problems parenting because of a mental illness. Like the majority, I am disturbed the child has not been adequately parented by the mother, despite having been a child in need of assistance since birth and being under state supervision.

I do not, however, share the majority's optimism that termination is going to assure this child stability and permanency. The child suffers a number of emotional scars. The child has lived with her mother for an extended period of time. She knows and loves her mother. She exhibits considerable concern for her mother. Termination of parental rights does not sever the biological and emotional bonding.

The mother's problems have resulted in this child having a difficult childhood. However, the mother is disabled and suffers from a disease. The mother is also poor and without extended family able to help supplement her parenting. We would like to think all children within our borders would experience a happy childhood, but childhood, like life, is full of problems. Children prepare for adult life through the problems of their childhood. The way these problems are solved may well

determine the course the children will take in solving problems in adult life. By terminating parental rights, we are suggesting to this young girl that if a family member or friend suffers from a mental illness she should terminate her relationship with the family member or friend. The child will be better prepared for the problems of adult life if she continues to work with her mother and her mother's problem.

The mental illness the mother suffers may be inherited by her daughter or her daughter's children. Knowledge of the mother's problems with the disease, and recognition of her treatment, will prepare the child for the problems should they be inherited.

Furthermore, termination of parental rights does not necessarily remove the child from the foster care system. This child's profile is one of a hard to place child. There are a large number of children with similar profiles that are awaiting adoption in this state. Termination makes her a legal orphan. She may well reach adulthood still an orphan. The child, if adopted, will carry into her adoptive home the unresolved problems with her biological family.

I would reverse the termination. I would order permanent foster placement with continual contacts between the mother and the child.