FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF M.L.L., A Child.	)	
J.A.M., Mother,	)	
Appellant,	)	
M.J.L., Father,	)	9-44 / 88-1361
Appellant.	)	

Appeal from the Iowa District Court for Scott County (Juvenile No. J(T)5645-0488), John C. Mullen, District Associate Judge.

Both parents appeal the termination of their parental rights. **AFFIRMED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly, Davenport, and Janice Hanrahan-Roemer, Davenport, for appellant mother.

John E. Molyneaux, Davenport, for appellant father.

James G. Sothmann, Davenport, guardian ad litem for the child.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Henry C. Filseth, Assistant Scott County Attorney, for appellee State.

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

DONIELSON, P.J. ¶91

The juvenile court terminated the parental rights of both parents and both appeal. Each parent challenges the sufficiency of the evidence to establish that the child cannot be returned to his or her custody. In addition, the father challenges the sufficiency of the evidence to establish that he abandoned the child.

The child in question is a boy born in June 1986 (M.L.L.). His parents have never been married to each other. The mother was only fourteen years old at the time of his birth. The father suffered brain damage from a childhood car accident. He resides with his mother and is believed to be incapable of independent living.

M.L.L. lived with his mother for about the first two months of his life, with the mother using relatives and others for child care. M.L.L. was adjudicated to be a child in need of assistance in October 1986 and has been in foster care continuously since early November 1986.

In April 1988, the State filed a petition to terminate the parental rights of both parents. Their rights were terminated, after a hearing, pursuant to Iowa Code section 232.116(1)(e). In addition, with respect to the father, the juvenile court relied on the additional ground of abandonment.

Appellate review of the proceedings to terminate a parent-child relationship is de novo; thus, it is this

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court's duty to review the facts as well as the law and adjudicate their rights anew. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by these findings. Id.

> Central to a determination of this nature are the best interests of the child. In this connection we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely 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 that parent is capable of providing.

Id.

I. We will first address the issue of abandonment by the father. Clear and convincing evidence is required to establish abandonment. Iowa Code § 232.116(1)(b). Abandonment is defined as:

> "Abandonment of a child" means the permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (1987).

There are two elements necessary to establish abandonment: 1) the giving up of parental rights and

responsibilities as exhibited by the party's conduct; and 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting to the extent practical and feasible in the circumstances is required. Id. It is not enough to subjectively maintain an interest in the child. Id.

The trial court found that the father had contact with M.L.L. in June of 1988. Prior to that, he had not contacted the child, visited him, nor provided any physical, financial, or emotional support for the child. The father disagrees with this finding. He contends that he did not intend to relinquish his rights. His lack of contact with the child, he argues, was the result of not being included in any of the case plans by the social workers. He says no efforts were made to reunite him with his son.

Our review of the record reveals that early on the father was offered visitation, but he never took advantage of it. Since over eight months had passed with no response from the father, the Department of Human Services did not contact the father again. The father made no inquiries about the child. His one visit occurred in June 1988, approximately two months after the filing of the termination papers, and lasted for an hour or two.

We find there is clear and convincing evidence that the father abandoned M.L.L. No affirmative parenting took place by the father. His lack of contact with the child after being offered visitation is sufficient to show he intended to relinquish his rights. Therefore, we affirm the finding of the trial court that he abandoned his son.

This decision is in the child's long-range best interests. M.L.L. suffers from the sickle cell anemia trait. As a result, he requires stable, consistent, and good care to maintain his health. The father is incapable of supporting himself or living on his own. He is twenty-two and lives with his mother as a result of a childhood injury to his head.

The State has a duty to assure that every child within its borders receives proper care and treatment and must intercede when parents fail to provide it. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Proof of abandonment provides sufficient grounds for termination. Iowa Code § 232.116(1)(b) (1987). Furthermore, termination of the father's rights is in M.L.L.'s long-range best interests. Therefore, the decision with respect to the father is affirmed.

II. The mother claims the State failed to establish by clear and convincing evidence that the child cannot be returned to his mother's custody and that his best interests require the termination of his mother's parental

rights. The mother argues that she is an unwed teen-age mother who desperately wants to parent her son. She was abused herself and admits she has resisted the social workers; yet she argues that she has a fundamental liberty interest in parenting M.L.L. and believes it is in his best interests that he remain with her.

The trial court terminated the mother's rights pursuant to Iowa Code section 232.116(1)(e) (1987). The only element at issue is whether it was proven that the child would suffer harm if returned to his mother. Insight for this determination may be gained from evidence of the parent's past performance, because that performance may be indicative of the quality of future care that parent is capable of providing. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

At the time of trial, the mother was sixteen, fending for herself on the street, and pregnant. The mother has not shown an ability to cope with her son's illness, but instead, according to the trial court, responded with hysteria, explosive outbursts, argumentativeness, and aggressive behavior. She did not take advantage of the services offered to her to help with M.L.L.'s medical condition.

The mother also failed to maintain consistent contact with the child while in foster care. She visited eight times in fifty-two weeks. She rejected efforts to teach

her parenting skills, child management, and nurturance. She had not significantly progressed according to the case plan even after four years of intervention and assistance. In fact, the court found that she fails to recognize a need to change her behavior and denies any abuse or neglect of her child.

Giving weight to the trial court's findings, we find there is clear and convincing evidence that M.L.L. cannot be returned to his mother's custody. She is immature, which is due to her age, but, more importantly, she has failed to recognize the importance of her son's medical care. She has resisted all efforts by the social workers and has exhibited no willingness to change.

The termination statutes are preventative as well as remedial. Dameron, 306 N.W.2d at 745. The State must act to prevent probable harm to a child and need not delay until harm has actually occurred. Id. The child should not be forced to endlessly suffer the parentless limbo of foster care, Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977), nor endlessly await the maturity of his mother. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Enough time has passed and it is in M.L.L.'s long-range best interests that his mother's parental rights be terminated. Therefore, the decision of the district court is affirmed terminating the mother's parental rights.

AFFIRMED.