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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

263

IN THE INTEREST OF E.K.T.
A Child,

T.S.T., Mother,

Appellant.

8-339
87-709

Appeal from the Iowa District Court for Scott County (No. J(T) 5324-0187), John G. Mullen, Judge.

The mother of a child appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

Catherine Alexander of Alexander & Preacher, Davenport, for appellant mother.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Gerald Schutte, Assistant Scott County Attorney, for appellee State.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

HABHAB, J. 261

The child in question is a boy born in October 1985. At the time of his birth, his mother was sixteen years old, was herself adjudicated to be a child in need of assistance, and was a resident of the Iowa Juvenile Home in Toledo.

Because the mother was unable to provide care for the child due to her placement in the juvenile home, the child was immediately placed in foster care and adjudicated to be a child in need of assistance.

In January 1986, the mother was placed in a facility called the Residential Adolescent Parent-Child Program (RAPP). The child, then three and one-half months old, was placed with her at this facility, where they lived for about four months.

The RAPP placement was terminated when RAPP staff members became concerned about the mother's erratic behavior and outbursts of temper. The child was once again placed in foster care, where he has since remained. The mother embarked on a life-style characterized by lack of employment and frequent changes of residence. She kept only about half of the visitation appointments with the child.

In January 1987 the State filed a petition to terminate the mother's parental rights. The State relied on the ground for termination stated in Iowa Code section

232.116(5).[1] That statute permits termination if the juvenile court finds that:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
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> b. The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and
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> c. 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.

The juvenile court terminated the mother's parental rights on the ground urged by the State. The mother has appealed from the termination order.

Our review of proceedings to terminate a parent-child relationship is de novo. We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses the court has heard and observed first hand, but we are not bound by them. Our primary concern is the best interests of the child. We look to the child's long-range, as well as immediate, interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We consider what the future holds for the child if returned to his or her parents. Id. 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

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1. Iowa Code section 232.116(5) is now cited as 232.116(e). See Iowa Code § 232.116 (Supp. 1987).

providing. Id. Our statutory termination provisions are preventative as well as remedial. Id. They are designed to prevent probable harm to a child. Id.

The State must prove the allegations of the petition to terminate by clear and convincing evidence. See Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982). This includes the requirement that before the court may terminate the parental rights there must be clear and convincing proof that the child will suffer harm in a manner specified in section 232.2(6). See In re Chad, 318 N.W.2d 213, 219 (Iowa 1982). 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). He or she need not endlessly await the maturity of his or her natural parent. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if enough time (twelve to eighteen months) has passed and the parent still cannot take care of the child. Id.

A. The mother challenges the sufficiency of the evidence to prove that the child cannot be returned to her custody. She argues there is no evidence that she has ever mistreated the child or cared inappropriately for him. After reviewing the record before us we must disagree. We find clear and convincing evidence that the child cannot be returned to the parent's custody.

The most striking evidence is found in the most recent "Individual Client Case Plan and Progress Review" dated January 7, 1987. In this report, the social worker assigned to this case, Pat Fennelly, states:

> In the six months following [E.K.T.'s] placement in foster care [T.S.T.] has moved 11 times. She is currently living with Julie Sachleban, who is also a client of the Department of Human Services on a protective service basis. [T.S.T.] has no income and is not contributing any portion of the household expenses to Julie. Julie's worker has told [T.S.T.] that she will not allow Julie to continue to have someone reside with her who is not going to contribute to the household.
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> * * *
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> In regard to visitation, [T.S.T.] was originally allowed twice weekly visits per court order. She attended most visits until September. From that time on she became very sporadic and in fact has not had a visit with [E.K.T.] since October 27, 1986.
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> * * *
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> [T.S.T.] is making no progress whatsoever on her case plan. She has moved 11 times in six months, has no income, and no way to provide a stable home for [E.K.T.]. She has not visited [E.K.T.] since October 26, 1986.
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> * * *
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> We recommend [E.K.T.] remain in foster care in Scott County. [T.S.T.] is offered weekly visitation which she does not take advantage of. We further recommend, however, that termination proceedings begin so that [E.K.T.] can be placed for adoption.

Other sources of evidence in the record validate the State's response to the mother's argument; that she maintains an unstable life-style, engages in outbursts of temper, and has a poor visitation record. We also note

that before the child's birth, the mother was accused of assaulting her grandmother (leaving injuries) and her mother (leaving bruises and biting her arm) and was suspected of shoplifting and burglary. The State has proven the allegations in its petition to terminate the mother's parental rights as to E.K.T. by clear and convincing evidence.

B. The mother also challenges the court's findings that, as required by Iowa Code section 232.102, custody of E.K.T. had been transferred for twelve of the past eighteen months. The mother argues that the three and one-half months that she was separated from E.K.T. while at the Iowa Juvenile Home should not be included in determining the twelve-month period. She also argues that the four months that she resided with E.K.T. in the RAPP should also not be included. We disagree.

The twelve-month period is commenced by a transfer of custody pursuant to section 232.102, i.e., a dispositional order. In the Interest of A.R., 316 N.W.2d 887, 888 (Iowa 1982). Our supreme court has held that the twelve-month period serves the purpose of giving a parent an opportunity to remedy the conditions which originally led the court to place custody of the child outside the parental home following a child-in-need-of-assistance adjudication. Id.

On December 18, 1985, a dispositional order was entered placing custody of E.K.T. in the Department of Human

Services. On January 20, 1986, that custody was transferred to the Residential Adolescent Parent-Child Program. At no time, and the mother agrees, has legal custody of E.K.T. been transferred to the mother.

The mother argues that because she was involuntarily institutionalized for three and one-half months of E.K.T.'s life as a result of being a child in need of assistance herself, that time should not be counted in the twelve-month period. We disagree.

The record shows that at the time of her placement in the Iowa Juvenile Home in Toledo, she was a child in need of assistance. The record further shows that she was adjudicated a child in need of assistance in August 1983, but was dismissed from that matter in May 1984. In May 1985, T.S.T. was again referred to the Department of Human Services by the juvenile court. Pursuant to a dispositional hearing held in August 1985, she was placed in the Iowa juvenile facility.

It is the State's position that proper consideration of a parent's institutionalization is provided for in Iowa Code section 232.116(6)(e). We agree. That provision states:

> Notwithstanding the provisions of subsections 2 to 5, the court need not terminate the relationship between parents and child if the court finds:
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> * * *
>
> e. That the absence of a parent is due to the parent's admission or commitment to any institution, ...

Thus, under section 232.116(6)(e), even if the provisions of subsections 2 to 5 thereof exist, the court, under the discretionary power given it by that section, need not terminate the parent-child relationship if, among other events, the absence of a parent is due to the parent's admission or commitment to an institution. The court was aware of the mother's institutionalization at the time it entered its termination decree. Nonetheless, it terminated the parent-child relationship. Our de novo review finds no error in this respect.

It is also the mother's contention that the time she lived with E.K.T. in the RAPP program should not be included in determining the twelve-month period. On the contrary, if the parent does not have legal custody of the child and that custody is placed in another, as it was in this instance, that time should be included in determining the twelve-month period. While residing in the RAPP, T.S.T. was in a structured environment and closely supervised. This situation cannot be compared to one where legal custody is returned to the mother for placement back in the home with minimal supervision by the department.

For the reasons stated above, we affirm the juvenile court's order terminating T.S.T.'s parental rights in E.K.T.

AFFIRMED.