

IN THE COURT OF APPEALS OF IOWA

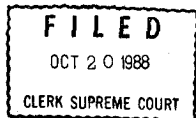
IN THE MATTER OF THE)
TERMINATION OF THE)
PARENTAL RIGHTS OF:)

J.J.H., D.O.B. 4-16-81 and)
M.H.M., D.O.B. 7-27-82,)

Children,)

C.S.M.,)

Mother-Appellant.)



61

8-326
87-1807

Appeal from the Iowa District Court for Cerro Gordo
(Juvenile) County (1896), Gilbert A. Bovard, Judge.

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

Mark A. Young, Mason City, for mother-appellant.

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

Susan F. Flander, Mason City, guardian ad litem, for
the children.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

62

C.S.M., mother of two children, appeals a juvenile court order terminating her parental rights. She challenges the sufficiency of the evidence to establish that the children cannot be returned to her custody, and further contends the juvenile court's findings on this question were not sufficiently specific. In addition, she contends the juvenile court should have declined to terminate her parental rights pursuant to Iowa Code section 232.116(6)(c), which permits the juvenile court to avoid an otherwise warranted termination if the court finds the termination would be detrimental to the children due to the closeness of the parent-child relationship. We affirm.

I.

The children, whose interests are involved in this case, are boys born in 1981 and 1982. The children have the same mother but different fathers. The boys lived with their mother until adjudicated children in need of assistance in 1984 due to evidence of inadequate food, clothing, sanitation, and supervision in their mother's home. The children were placed in foster care. During the next two years the children lived primarily in foster care, although they were occasionally placed with the mother for brief periods. The last temporary placement with the mother lasted nearly four months, ending in September of 1986; the children have been in foster care continuously

since that time. The juvenile court found the brief time periods which the children spent in the mother's home were marred by continued neglect, the mother's failure to maintain a job or stable residence, and by the mother's intermittent incarceration for petty crimes. The court also found evidence the mother refused to cooperate in a number of services offered by the department of human services (DHS). She failed to learn basic nutrition or sanitation and also failed to improve her parenting skills. In addition, evidence existed that certain occurrences of abuse instigated by one of the mother's live-in boyfriends and the mother's sister.

Pursuant to the State's request, the juvenile court terminated the parental rights of the mother and both fathers. With respect to the fathers, the juvenile court relied on the ground of abandonment. With respect to the mother, the juvenile court relied on the grounds for termination stated in Iowa Code section 232.116(5). Only the mother has appealed from this termination order.

II.

As grounds for this appeal, the mother first argues the State failed to show sufficient evidence to establish the children could not be returned to her home. Second she contends the juvenile court's findings on the sufficiency question were not adequate to set forth the specific grounds for termination. Finally, the mother urges the

juvenile court should have declined to terminate her parental rights because such termination is detrimental to the children at this time because of the closeness of the parent-child relationship.

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.

The question before us is whether the State demonstrated by clear and convincing evidence these children would suffer harm cognizable under the statute if they were returned to the care of their mother.

Central to our determination in this matter are the best interests of the children. 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. Dameron, 306 N.W.2d at 745. The State may revoke the rights of parents if the allegations are proven by clear and convincing evidence. Iowa Code § 232.116(1)(e)(sup. 1987). It is proper for the court to consider the past performance of the parents to gain insight into the probable quality of their future

parenting. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). 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 children if returned to the parent. Id. 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 careful review of the record convinces us the State has shown by clear and convincing evidence the best interests of the children, both at the present time and in the future, will be better served if C.S.M.'s parental rights are terminated. In short, we determine the juvenile court has sufficient evidence to find the children would suffer harm due to C.S.M.'s neglect and lack of supervision.

The reason behind the children's original emergency removal was lack of proper supervision. This inadequate supervision culminated in a finding of abuse by DHS in August of 1984. At the same hearing the DHS expressed concern over unsanitary and overly crowded living conditions for the children, indications of severe developmental delay in the case of J.J.H., and the mother's resistance to aid from outside her immediate family. Since

the fall of 1984 these children have been transferred between their mother, relatives, and foster parents a total of nine times. The children were transferred to the mother on three separate occasions. All three of these transfers met with little if any success.

Despite being offered numerous opportunities to improve her parenting skills through services from both DHS and Lutheran Social Services, C.S.M. has been unable to organize her life so as to care for the children, to protect them from abuse of a boyfriend, or to stay out of trouble with the law. With the exception of brief instances, C.S.M. has been unmotivated to change and apparently has not benefited from any of the services offered her. The juvenile court referee summed up this record by stating:

In that home, which has often been more a concept than a reality in the past, given the mother's nomadic ways and the shifting population of the household, the children have been physically neglected and subjected to an environment clearly harmful to their development. It is imminently likely this neglect would continue if they are returned to the home.

We agree.

Clear and convincing evidence supports the conclusion harmful neglect to these children would occur if they were returned to the custody of their mother.

AFFIRMED.