

IN THE COURT OF APPEALS OF IOWA

No. 1-586 / .91-1035

FILED

DEC 31 1991

CLERK SUPREME COURT

IN THE INTEREST OF

A.L.C.,

A Minor Child.

D.C., Mother,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Juvenile Referee.

The appellant mother appeals a judgment of the juvenile court terminating her parental rights. **AFFIRMED.**

Al Sturgeon and Frank Cosgrove, Sioux City, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Katherine S. Miller-Todd, Assistant Attorney General, for appellee.

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

HAYDEN, J.

D.C. is the mother of two sons. Her first son was born on May 11, 1986. Shortly after birth he was placed in emergency foster care. D.C. refused to participate in family services. Her parental rights to this child were subsequently terminated on February 24, 1988.

On May 24, 1990, D.C. gave birth to A.L.C., the child involved in this proceeding. After A.L.C.'s birth, D.C. was offered parenting classes; however, she refused these services. Because of D.C.'s history of mental health problems and her dysfunctional family history, a temporary removal order was secured. A.L.C. was placed in emergency foster care on May 26, 1990. An adjudication hearing was held on July 2, 1990, at which time the parties stipulated A.L.C. was a child in need of assistance. The custody of A.L.C. was placed with the Department of Human Services for family foster care, and a case permanency plan was ordered which provided for supervised visits, parenting classes, and psychological examinations of D.C.

The psychological examinations conducted on D.C. indicated an IQ of 64, placing D.C.'s intellectual functioning in the mild range of mental retardation. The examination also revealed D.C. possessed little or no insight and her ability to make judgments was severely limited. A parenting assessment evaluation revealed D.C. lacked knowledge in all areas of parenting and child care.

D.C. still maintained a negative attitude toward family services; however, she participated in a parent survival program during November and December. At the conclusion of the program it was determined A.L.C. would be at risk if placed with D.C. for extended periods of time.

The State filed a petition for termination of parental rights on March 13, 1991. A hearing was held on May 10, 1991. The juvenile court terminated D.C.'s parental rights.

D.C. appeals the juvenile court's order, challenging the sufficiency of the evidence to terminate her parental rights. D.C. maintains the juvenile court placed too much emphasis on the fact her parental rights to her first child had previously been terminated.

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, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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

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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 to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

In the present case, the juvenile court terminated D.C.'s parental rights pursuant to Iowa Code sections 232.116(1)(f) and (g). D.C. argues subsections (3) and (4) of Iowa Code section 232.116(1)(f) have not been met. She also argues subsection (4) of Iowa Code section 232.116(1)(g) has not been met. We disagree.

Iowa Code section 232.116(1)(f) subsection (3) requires that a parent continues to lack the ability or willingness to respond to services which would correct the situation. Subsection (4) requires that an additional period of rehabilitation would not correct the situation.

Unfortunately, D.C. has a mental disability. She functions in the mild range of mental retardation. Mental disability, standing alone, is not a sufficient reason for the termination of the parent-child relationship, but it is a contributing factor to the inability to perform the duties of a parent. In re J.W.D., 456 N.W.2d 214, 218 (Iowa 1990) (citing In re Wardle, 207 N.W.2d 554, 563 (Iowa 1973)). Such a disability is a proper factor to consider in determining whether a child is neglected to the point at which termination is necessary to serve the child's best

interests. In re J.W.D., 456 N.W.2d at 218. This necessity arises when the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. Id. We are faced with such a situation here.

D.C. has made some progress in meeting A.L.C.'s immediate basic needs. In addition, she has taken care of other children on occasion for family members and friends. Nevertheless, D.C. lacks the ability to assume total responsibility for parenting A.L.C. and to adapt to his future needs. The psychologist who administered a psychological evaluation concluded without reservation D.C. "would never be able to parent a child." A nurturing evaluation and parenting assessment revealed A.L.C. would be at risk due to D.C.'s low intellectual functioning and her lack of knowledge of child rearing and child development. D.C.'s mental disability limits her insight and ability to make good judgments. A.L.C. was described as a hyperactive and "fussy" baby. D.C. admitted she did not believe she could care for the child when he was fussy or sick. It is unlikely additional services will improve the situation significantly.

D.C. has developed no plans for the future. She stated her relationship with the man she is currently living with is not good and she wanted to find another home. Yet, she has taken no steps to relocate. D.C. admitted she needed to find employment; however, she lost the telephone number

of a prospective employer provided by her social worker. D.C. stated she forgot about contacting her social worker to get the number again.

Of even greater concern is D.C.'s resistance and negative attitude toward family services. Although D.C. testified she was willing to accept help, this has not been her posture in the past. We disagree with D.C.'s assertion that the juvenile court placed too much emphasis on the fact her parental rights to her first child had previously been terminated. After the birth of D.C.'s first child, services were offered to assist D.C. in learning parenting skills. She refused these services. D.C.'s refusal of services was a proper factor for the court to consider in the present proceedings. As previously noted, insight can be gained from a parent's past performance for that performance may be indicative of a parent's future care. D.C. again resisted services during her pregnancy with A.L.C. Since A.L.C.'s birth D.C. has participated in the parent survival program. On several occasions, however, she did not attend supervised visitations with A.L.C., stating she forgot the dates and times of the appointments.

D.C. also argues the State has not carried its burden under subsection (4) of Iowa Code section 232.116(1)(g). We determine the record also supports the juvenile court's conclusion A.L.C. could not be returned to his mother at the present time.

We conclude the juvenile court was correct when it terminated D.C.'s parental rights to A.L.C. We affirm the decree of the juvenile court.

AFFIRMED.