FILED
MAR 3 1 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF N.M.S. and **E.N.S.**, Children;	)	Filed March 31, 1987 296
T.R.S., Mother,	)	
Appellant.	)	6-512 86-806

Appeal from the Iowa District Court for Scott County (Nos. J(T) 4905-0286 and J(T) 4906-0286), John A. Nahra, Judge.

The natural mother of two children appeals from the juvenile court orders terminating her parental rights with respect to the children pursuant to Iowa Code section 232.116(5). **AFFIRMED.**

Bobbi M. Alpers, of Davenport, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Special Assistant Attorney General; and James Ottesen, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., Donielson and Snell, JJ.

OXBERGER, C.J.

In this appeal, the mother of two young children challenges the juvenile court's order severing her parental rights. The State instituted the underlying proceeding pursuant to section 232.116 of the Iowa Code, which sets forth various grounds for the termination of parent-child relationships. Specifically, the State has relied upon subsection 232.116(5), which authorizes termination when:

> a. The children have been adjudicated as children in need of assistance pursuant to § 232.96; and
>
> b. The custody of the children has been transferred from his or her parents for placement pursuant to § 232.102 for at least 12 months; and
>
> c. There is clear and convincing evidence that the children cannot be returned to the custody of their parents as provided in § 232.102.

Iowa Code § 232.116(5)(1985).

The appellant concedes that the first two prongs of this statutory standard have been satisfied; a determination was made adjudicating the children in need of assistance as provided in Iowa Code section 232.96 (1985), and the children have been placed outside the home for a period exceeding twelve months. The sole but difficult issue before us is whether the record contains clear and convincing evidence establishing that the children cannot be returned to the appellant's custody as provided in section 232.102.[1] Our review of the record persuades us that such evidence exists therein; accordingly, we affirm the district court's order.

Our analysis of this issue must begin with a brief recital of the basic principles governing our review. When examining a juvenile court's decision

---

[1]Pertinent to the present controversy, section 232.102(3)(b)(1985) provides that a child should not be returned to his or her parent's care if the record establishes that "[t]he child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available."

in a termination proceeding, our paramount concern is the best interest of the children. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). In making this determination, we review the record de novo; thus, we are not bound by the findings of fact made by the trial court, but we do give them weight, particularly where the credibility of witnesses is implicated. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

Although we have recognized a presumption that the best interests of children will be served by continued parental supervision, this presumption is in no way conclusive, and is tempered when necessary by the State's responsibility to insure that every child receives proper care and treatment. In re Interest of T.D.C., 336 N.W.2d 738, 740 (Iowa 1983); see also In Interest of K.L.C., 372 N.W.2d 223, 226 (Iowa 1985). In ascertaining whether a child's parents are capable of providing the requisite care, we look to the child's long-range as well as immediate needs. Dameron, 306 N.W.2d at 745. In this connection, we necessarily consider what the future likely holds for the child if parental custody is reestablished. Id. Hence, we recognize that "[i]nsight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of future care that parent is capable of providing." Id.; In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979).

With the foregoing principles in mind, we now turn to the merits of this appeal. The record discloses that the children whose custody is at issue, N.M.S. and E.N.S., were first declared in need of assistance in the Fall of 1984; at that time, the children were approximately fourteen-months and three-months old, respectively. The determination arose after the Scott County Department of Social Services received a call indicating that a child residing at the appellant's address had been beaten and appeared severely bruised. Upon arriving at the appellant's apartment, the department's investigator found that a major

portion of N.M.S's body was covered with bruises; the smaller child, E.N.S., appeared unharmed. It was subsequently determined that N.M.S.'s bruises were the result of child abuse. By juvenile court order, the children were then placed in the temporary custody of the Scott County Department of Human Services; their mother, T.R.S., has never regained custody.[2]

The evidence is quite clear that T.R.S. did not abuse N.M.S.; rather, the record reflects that the man with whom T.R.S. was residing at the time, E.B., inflicted the abuse. In addition, the record contains a legion of evidence indicating that E.B. frequently abused T.R.S. The primary concern of the State is T.R.S.'s apparent inability to protect the children from such harm. T.R.S. testified that although she hated to see E.B. beat N.M.S., she felt unable to stop him for fear that he would hurt her; consequently, her reaction was to leave the room. Furthermore, the record discloses that prior to her relationship E.B., T.R.S. had been involved with a number of abusive men and continually responded in a similar, passive manner.

In an effort to reunite T.R.S. with her children, the Department of Social Services devised a number of programs aimed at helping T.R.S. to overcome her inadequacies. The record reveals that T.R.S. became enrolled in a domestic violence project and that she actively participated in a parenting education program. In addition, T.R.S. maintained regular visitation with the children. Moreover, she advised her social workers that, pursuant to their suggestion, she was no longer involved with E.B. As a result of the progress T.R.S. appeared to be making, the department planned that the children would be returned to her in May of 1985. In April of that year, however, one of the social workers

---

[2]The juvenile court found that both children were abandoned by their putative fathers. The fathers' parental rights were also terminated in the underlying action and neither have challenged these rulings.

discovered that T.R.S. was still seeing E.B. and that he had continued to abuse her. Upon further evaluation, the department concluded that T.R.S. remained unable to protect the children from harm, and the underlying action was commenced. At the time of the hearing before the juvenile court, T.R.S. had left Davenport and had moved to Clinton where she felt that she could get away from E.B. The record further reveals, however, that T.R.S. was pregnant with a third child and that E.B. was the father. In addition, T.R.S. admitted that she had been in contact with E.B. within the week preceding the hearing.

All but one of the several agency personnel involved in the case recommended that the children not be returned to T.R.S. Without equivocation, these officials testified that they feared for the safety of the children if returned to T.R.S. because of her apparent refusal or inability to terminate her relationship with E.B.; in addition, it was their general expectation that if T.R.S. were able to sever her ties with E.B., she was likely to become involved in a similar abusive relationship with someone else. The following excerpt from the report of a social worker whose agency was involved with T.R.S. for nearly two years summarizes these concerns:

> [T.R.S.] has a long history of abuse in her own childhood home as well as at the hands of people she has chosen to be involved with as an adult. She was abused by her father, her ex-husband, and [E.B.]. She was present while [E.B.] was abusing [N.M.S.] and failed to protect [N.M.S.] from harm. She has on numerous occasions chosen inappropriate people to be caretakers for her children.
>
> A full gamut of services have been offered to [T.R.S.] in order to help her gain insight into her own role as a victim and to help her strengthen her self-esteem to be able to protect herself and consequently her children. Despite intensive services from Bethany Home, Homemakers Services, Domestic Violence Advocacy Program, and Vera French Mental Health Center, [T.R.S.] has made little progress in this area.

On the basis of this and a dearth of additional similar testimony, the juvenile court concluded that the evidence clearly and convincingly established

that T.R.S.'s parental rights could not be restored without a fear for the children's well-being. Our de novo review of the record has caused us to reach the identical conclusion.

As with so many cases of this nature, our task is in essence a fine line determination between the desirability of preserving the family unit and the resultant potential harm likely to befall the children whose interests it is our responsibility to protect. In balancing these interests, we are constantly reminded that returning a child to a parent whose capabilities are fraught with uncertainty may result in the destruction of an innocent life. Hence, while we agree with the social worker who testified in T.R.S.'s behalf in noting her improvements and her participation in a number of the programs extended to help her, we are nevertheless required to acknowledge the concern of those involved in the case and of the juvenile court in noting T.R.S.'s refusal or inability to disassociate herself from the man whose actions caused the removal of her children. Furthermore, our position in an appellate capacity requires us to give weight to the district court's findings concerning the credibility of witnesses. In re Interest of K.L.C., 372 N.W.2d at 226. Accordingly, we pay deference to the juvenile court's conclusion that T.R.S. has in fact made minimal progress in the areas which she was advised required improvement before the children could be returned to her custody.

Finally, we agree with the juvenile court's refusal to allow T.R.S. additional time to improve her parental skills. While we recognize that the termination of her parental rights is a drastic and final step, we see little to be gained and much to be lost from requiring her children to remain in temporary care any longer. The record discloses that N.M.S. and E.N.S. have been in this "parentless limbo" for over two years, and that T.R.S. has been given an equal length of time to demonstrate her parenting abilities. We think that this is

ample time for T.R.S. to have made the necessary changes. Furthermore, the evidence reveals that N.M.S.'s and E.N.S.'s chances for adoption are extremely good at their current ages, but that their adoptability decreases as they continue to grow older. Accordingly, we concur with the juvenile court's conclusion that, "In light of the services that have been offered this mother, the odds against achieving the desired results for a family unit are unfavorable resulting in a risk of waiting for the desired results that this Court is not willing to assume." See also In re Interest of Lewis, 257 N.W.2d 505, 512 (Iowa 1977).

AFFIRMED.