IN THE COURT OF APPEALS OF IOWA

No. 6-685 / 96-1090

IN THE INTEREST OF P.B., J.B., and C.A.D., Minor Children,

S.B., Mother,

Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Cherokee County, Mary L. Timko, Associate Juvenile Judge.

Mother appeals from the order terminating her parental rights. **AFFIRMED.**

M. W. Miller, Jr. of Miller, Miller, Miller, P.C., Cherokee, for appellant.

Thomas J. Miller, Attorney General, and Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, John A. Wibe, County Attorney, and Mark R. Cozine, Assistant County Attorney, for appellee-State.

John C. Polifka, Sioux City, guardian ad litem, for minor children.

Considered by Sackett, C.J., and Habhab and Vogel, JJ.

HABHAB, J.

Susan is the mother of Patricia, born May 22, 1987; Jonathon, born April 12, 1990; and Charles Allen, born May 23, 1991. At issue on this appeal is the termination of Susan's parental rights to these children. The parental rights of the children's fathers were terminated in July 1994 and are not at issue. Susan has a fourth child, J.B., born October 13, 1992. Susan's parental rights to J.B. are not at issue on this appeal.

In 1991, Susan and the three children were living with Charles D. Sr. At that time, the family was receiving public health nurse and homemaker services from the Department of Human Services because of a founded report of denial of critical care regarding Charles Allen. In February 1992, police were called to the home on a domestic disturbance report. The home was determined unfit for habitation and another report of denial of critical care was founded. The family was subsequently evicted from their home.

In March 1992, the children were found in need of assistance due to health and safety concerns. In its order, the court noted there was "approximately four months' worth of garbage piled up in the home. There was a broken window with glass on the floor in the kitchen area. There was a dead, rotted pheasant hanging in the back porch area. . . ." The court also noted that clothing was strewn throughout the house and a davenport blocked the front door, leaving only one other exit. "There was also a butchered deer and small calf hanging in the garage that had turned rancid." The

children suffered skin discoloration and a rash due to the force necessary to clean them. The court allowed the children to remain with Susan and Charles Sr.; however, in-home counseling, homemaker services, family-centered services, and family preservation services were to be provided by the Department. Despite the receipt of services, on July 16, 1992, the custody of the children was transferred to the Department for placement in foster care as the family was evicted from their home.

After the children were placed in foster care, Susan attended weekly supervised visits until October 1992. She attended half of the visits through February 1993, and resumed regular attendance in June 1993. In August 1995, her lease was terminated because of lack of cleanliness and unauthorized persons residing in the apartment.

After Susan secured alternate housing, the Department conducted an unannounced visit on September 18, 1995, and found the apartment in disarray and noted a foul smell. Susan did not have a working refrigerator, J.B.'s bed was soaked with urine, and there was old food on the table and on the stove which appeared to have been there for some time. In February 1996, another visit was conducted by the Department and the home appeared cluttered. Cigarette butts were found scattered around the floor of three-year-old J.B.'s room.

Both Jonathon and Charles Allen have behavior problems requiring consistent interaction. During the two-hour home visits, Susan had difficulty consistently

disciplining the children. She often allowed other adults to be present during her visits with the children and spent time visiting with them and not with the children.

An evaluation of the children was completed by Janis Edward in August 1995. The evaluation revealed Jonathon and Charles Allen did not have a strong relationship with Susan, and Jonathon did not want to live with her. Patricia and Susan had bonded, but Patricia had mixed feelings about living with Susan without her brothers. Patricia stated to the evaluator the reason she wanted to live with Susan was so she could clean the house and feed and care for the family. All three children have a close relationship with one another. The evaluator noted it would be imperative for the three children to stay together.

In October 1995, the State filed a petition to terminate Susan's parental rights. At trial on March 27, 1996, Susan was twenty-five years old, Patricia was nine, Jonathon was six, and Charles Allen was five. Mindy Louscher testified she had been coordinating visitations between Susan and the children since July 1995. She stated she had several concerns including, but not limited to, Susan's living arrangements with her sister Brandy A. and Brandy's boyfriend, Allen B., the cleanliness and safety of the home, and her new relationship with Jim. When asked whether the court should terminate Susan's parental rights, Mindy stated she had "great concerns if all three of the children were returned to Susan at this time."

Jodee Jackes, a social worker, became involved with the family in May 1993. She recommended termination because the children needed permanent placement.

On May 20, 1996, the court terminated Susan's parental rights pursuant to Iowa Code sections 232.116(1)(c), (d) and (e). It found the children had been in foster care since July 1992. Services were offered to Susan, and although "things are a little neater and not quite as disruptive," the court found she had made little progress. It concluded termination was in the best interests of the children.

Susan appeals. On September 27, 1996, the guardian ad litem filed a joinder, concurring with the arguments contained in the State's brief.

Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995)(citation omitted). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children, which include both their long-range and immediate interests. *In re A.Y.H.* 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> 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 performances, for that performance may be 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 T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994) (citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

We find the juvenile court properly terminated Susan's parental rights pursuant to Iowa Code sections 232.116(1)(c), (d) and (e). Susan has a difficult time controlling all the children. The children become physically aggressive and she has been unable to intervene appropriately. Instead of disciplining the children, Susan tends to ignore the behavior, which in the end generally causes more problems because the situation has then escalated. Discipline is a difficult task for her.

Charles Allen displays problems in a classroom setting and is in the at-risk category of learning. He has had many behavior problems in school. When he gets upset, he has a tendency to throw things, turn over chairs, kick, push, and bite. He usually averages about two "time outs" a day; he has to be restrained because he throws things and puts other children in danger. Consistent interaction is necessary to address these behaviors.

Jonathon has recently begun to exhibit unacceptable behaviors. His behavior has become negative. He has been spitting at others on the bus, and urinating on the floor, in bed, and on his clothes. He has torn curtains from his bedroom and thrown toys at the light bulbs.

The two boys do not display any bonding or connection with Susan. The bonding the boys show toward adults who have a lot of meaning in their life are their foster parents, whom they refer to as either Mom and Dad or Mommy and Daddy. Jonathon is adamant he does not want to live with his mother, and Charles Allen is too young to understand what is going on but has made it clear that he wants to stay

with his foster parents.

The three children are closely bonded. We believe the Department should use its best efforts to see that the three children stay together. There is a very strong unique bond among the three of them.

We conclude there is clear and convincing evidence that after nearly four years in foster care the children cannot be returned to Susan. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96. "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757,760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 149, 146 (Iowa 1977)). These children need a safe, stable home and a nurturing environment which Susan has been unable to provide at any time in the past and shows no ability to provide in the future. Susan has had more than ample time to make the necessary changes in her life to assume the care of the children but has failed to do so.

In our de novo review of the record, we find there is clear and convincing evidence establishing that the best interests of the children mandate termination of Susan's parental rights.

AFFIRMED.

Vogel, J., concurs; Sackett, C.J., specially concurs without opinion.

SACKETT, C.J. (specially concurring)

I concur specially without opinion.