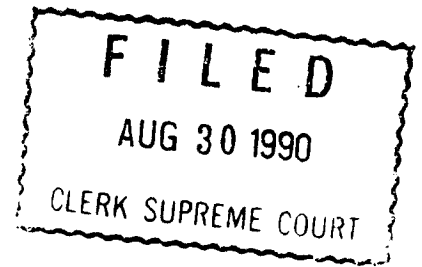


IN THE COURT OF APPEALS OF IOWA

No. 0-297 / 90-129



IN THE INTEREST OF J.R. AND D.R., CHILDREN;

W.D.R., Natural Father, and Z.R., Natural Mother,
Appellants.

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Appeal from the Iowa District Court for Polk County,
Vincent Hanrahan, Judge.

The parents of two children have appealed from the termination of their parental rights. They challenge the sufficiency of the evidence to establish the children cannot safely be returned to their home. The father also contends the termination denied him due process because the Department of Human Services: (1) did not give him adequate assistance in conforming his conduct to DHS expectations, and (2) denied him certain services because of his refusal to admit sexual abuse. **AFFIRMED.**

John F. Sprole, Des Moines, for appellant father.

James S. Blackburn of Carney, Hudson, Williams, Blackburn & Grask, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Charles K. Phillips, Assistant Attorney General, for appellee State.

Michael A. Culp, Des Moines, guardian ad litem for the children.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

Z.R. and W.D.R. are the parents of two boys born in November 1981 (J.R.) and April 1986 (D.R.). During the family's extensive history of Department of Human Services' (DHS) intervention, the father's son from another marriage (R.R.) and the mother's five sons from another marriage (E.J., B.J., M.J., T.J., and F.J.) lived intermittently with Z.R. and W.D.R.

The record reveals a long history of family violence. The father (W.D.R.) repeatedly assaulted the mother (Z.R.). Both parents now deny the father ever abused the wife, though social service records indicate the wife reported such abuse in the past. Despite their divorce, the mother has resumed residence with the father.

In June 1981, a founded child abuse report indicated the father had hit one of the children with a dog chain. Subsequent reports in September 1981, December 1982, and September 1983 reveal the father hit the children with boards and a switch and kicked them. At one time the father was jailed in Missouri because of a child abuse charge. A child abuse report reveals that in September 1987 the father shoved or threw to the ground several of the boys during a domestic abuse incident. Both D.R. and J.R., the children now in question, were shoved around during the episode.

After this last incident of physical violence, the mother and children moved to The Family Violence Center in

Des Moines. While at the center, the mother was unable to adequately provide for her children's basic needs. She proved unable to do her children's laundry or keep their living quarters clean. The mother was unable to keep herself and the children clean, and despite the presence of urine on the children's bedding, the mother did not change their bed sheets for two weeks. The family's quarters smelled of urine and vomit, and apparently there was urine on the floor and window sills.

While at the center, the children engaged in bizarre behavior. One son held a knife to his throat, and also attempted to choke himself with an electrical cord. Four of the five children at the center engaged in inappropriate sexual behavior, and D.R., then a year and a half old, was self-abusive and would bang his head on the floor.

The mother was unable to seek available public assistance or medical assistance for her family. Staff intervention was necessary to protect her children's health.

On November 6, 1987, the boys were placed in foster care. Due to their sexual behavior, they underwent medical examinations. Four of the five boys then in Z.R.'s care had been sexually assaulted. J.R., then age five, showed signs of repeated anal assault with a digital or penile-type object. The nature of this abuse (repeated assaults over four to six weeks old on a number of children in one family) indicated to officials that a caretaker was

likely to have abused the children, and it was unlikely any other caretaker could not have known about the abuse. M.J., W.D.R.'s stepson, later identified his stepfather as the perpetrator of the abuse.

At the time of the children's removal, the mother was transferred to the Broadlawns Hospital Psychiatric Unit. She was released later in the month and went to Missouri to reside with her mother. The mother later returned to Iowa to live with the father.

The children were adjudicated children in need of assistance on January 20, 1988, and a CHINA order was entered on May 2, 1988. A variety of services were provided to the parents, including parenting classes, therapy, an alcohol evaluation, counseling, and homemaker visits.

A petition to terminate parental rights was filed on June 26, 1989. A hearing was held on October 10, 1989, and a ruling terminating parental rights was entered January 3, 1990. The parents appeal from that ruling.

Both parents challenge the sufficiency of the evidence to establish that the children cannot safely be returned to their home. In addition, the father raises two other issues. He contends the termination denied him due process because DHS did not give him adequate assistance in conforming his conduct to the expectations of the department. He also contends the termination violated his due process rights because DHS allegedly denied him certain services due to his refusal to admit sexual abuse.

I. Standard of Review. 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 (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.

Iowa Code section 232.116(1)(e), relied upon as the basis for termination in the case at bar, allows termination of the parent-child relationship if:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96;
- (2) 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
- (3) There is clear and convincing evidence the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The third requirement of this section is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code § 232.2(6), exist. In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

II. Provision of Services. The father alleges he was denied due process because DHS refused to provide services to assist him in regaining custody of his children because he denied sexually abusing the children. This court is cognizant of the constitutional implications of the father's argument. However, a review of the record does not reveal the denial of services to this family.

DHS wanted the father to participate in the IFSAP program in which participants need to admit sexual abuse. When the father refused, alternative counseling was found. The record does not support this family was denied any services because of the father's refusal to admit sexual abuse.

The second portion of the father's brief includes the assertion that DHS refused to assist the father to meet DHS expectations and regain custody of his children. In his brief, this argument overlaps with his claim that he was denied services because he refused to admit he sexually abused the children. In any case, the record does not support any finding that DHS denied W.D.R. assistance or violated his right to substantive due process.

III. Clear & Convincing Evidence. Both parents argue there is insufficient evidence to support termination of their parental rights. Central to a determination of this nature are the best interests of the children. In re R.J., 436 N.W.2d 630, 635 (Iowa 1989). In this connection, we look to the children's long-range as well as immediate interests. Id. Hence, we necessarily consider what the future likely holds for the children if returned to their parents' care. Insight for this determination can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care they are capable of providing. Id. "[O]ur 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).

The record is replete with incidents of physical violence which have been a part of this family's history. While in their parents' care, these children have witnessed domestic violence between their parents and they have been physically assaulted as well. While in his parents' care, J.R. sustained repeated sexual assaults.

While the parents visited with their children, attended parenting classes, and generally complied with the DHS case plans, they have been unable to assimilate what they have learned and apply it in their own parenting behavior. The parents' degree of compliance with the case plan is not determinative; what matters is the degree to which they have benefited from such compliance. Both parents testified they see no problems which need to be addressed before the children may be returned to their care.

This is an extraordinarily dysfunctional family, and it is in the children's best interests to terminate Z.R. and W.D.R.'s parental rights. Clear and convincing evidence sustains the determination that these children cannot be protected from some harm which would justify their adjudication as children in need of assistance if returned to their parents' care. The decision of the juvenile court is affirmed.

AFFIRMED.