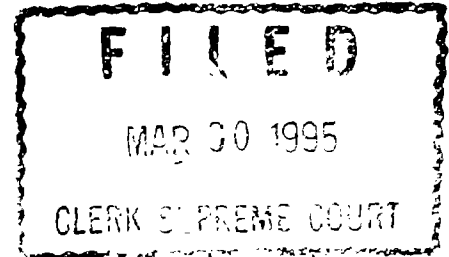


IN THE COURT OF APPEALS OF IOWA

No. 5-120 /94-1772



IN THE INTEREST OF A.S., A Minor Child,
L.A.S., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County,
A. J. Van Zee, Associate Juvenile Judge.

L.S. appeals a district court judgment terminating her
parental rights to her minor child, A.S. **AFFIRMED.**

Robert J. McGee of Robert J. McGee, P.C., Clinton, for
appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen,
Deputy Attorney General, Judy Sheirbon, Assistant Attorney
General, Lawrence H. Schultz, County Attorney, and Ross J.
Barlow, Assistant County Attorney, for appellee.

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes,
Clinton, guardian ad litem for minor child.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

HAYDEN, P.J.

L.S. is the mother of A.S., born August 16, 1990. L.S. has resided in Clinton all her life. She is forty-two years of age. L.S. is a certified nurses' aid but relies on AFDC payments when A.S. is in her care. She also receives \$446 per month in SSI benefits.

In March 1991 L.S. was sentenced to a thirty-day jail term arising from a public intoxication charge. The State obtained a temporary removal order and placed A.S. with L.S.'s sister in Iowa City. The State subsequently moved to dismiss the order after L.S. was released from jail. The State determined no CINA proceeding was needed at that time. A case worker, Renee Koupal, who observed L.S. in March 1991, stated at the termination hearing when L.S. is sober she is a good parent and very nurturing. However, on May 29, 1991, the juvenile court entered a temporary removal order after L.S. was again arrested for public intoxication. L.S. had left A.S. with a friend who in turn gave her to relatives.

On May 16, 1991, a CINA petition was filed on A.S.'s behalf, alleging L.S. had an alcohol abuse problem. The court order adjudicating A.S. as being in need of assistance was filed on June 21, 1991. A dispositional order was entered on September 26, 1991, placing custody of A.S. with the department of human services (DHS), and A.S. was placed in foster care.

Physical care of A.S. was returned to L.S. in February 1992. Rich Russman, a family counselor with the DHS, reported L.S. was in compliance with all aspects of the case plan and her progress was generally excellent. He reported A.S. adjusted very well on her return home. L.S. continued to keep her appointments with the case workers and mental health center. On July 21, 1992, the CINA petition was closed based upon all parties' concurrence L.S. had successfully completed the case plan.

L.S. continued to make progress, and the district court terminated all services in January 1993. However, on April 2, 1993, an ex parte order was entered by the court removing A.S. from L.S.'s custody based upon an allegation L.S. was again intoxicated. A.S. was placed in foster care. A new CINA petition was filed, alleging A.S. was a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2)(n) (1991). On June 3, 1993, A.S. was adjudicated a child in need of assistance. The juvenile court found L.S. had begun to consume alcoholic beverages while at home to the point of intoxication and had placed harassing telephone calls to family members. The court also found L.S. was a good and loving mother and A.S. had never been harmed during her drinking episodes.

On June 10, 1993, the court entered an order concluding there was no substantial evidence to believe further removal was necessary to avoid imminent risk to A.S. It was reported to the court since A.S.'s return there had

been no further incidents of alcohol abuse. The court withdrew the adjudication. However, on October 12, 1993, another application was made for temporary removal based on L.S.'s intoxication. A.S. was again placed in foster care. A petition was filed on October 18, 1993, alleging A.S. was in need of assistance pursuant to section 232.2(6)(c)(2)(n) of the 1993 Code.

On January 11, 1994, the district court held a combined adjudicatory and dispositional hearing on the State's CINA petition. The court found L.S. had been intoxicated and demonstrated out of control behavior in October 1993 but was always sober and prompt with her counselors. The court ordered L.S. complete an in-patient treatment program, ADDS in Burlington, as a condition precedent to A.S.'s return.

On April 22, 1994, L.S. admitted herself on a voluntary basis to the Marc Unit In-Patient Substance Abuse Treatment program at Mercy Hospital, successfully completing the program on May 13, 1994. L.S. stated she did not want to enter the ADDS program because of the program's length. She petitioned the court to modify the dispositional order, contending she had successfully completed the Mercy program. The petition was denied. On June 3, 1994, the State filed a petition to terminate L.S.'s parental rights based on her failure to attend the ADDS program. A hearing on the petition was filed on August 23, 1994.

At the hearing, numerous witnesses testified when L.S. was sober, she was a good and loving mother who took

excellent care of A.S. However, they also testified L.S. was a binge drinker and was very unstable when she was drinking. L.S. testified she had been attending three to four AA meetings each week and would be willing to submit to random urinalysis. On September 13, 1994, the court, on the State's motion and over L.S.'s objection, allowed the record to be reopened for the submission of additional testimony. The testimony revolved around the statement of a Clinton police officer on September 8, 1994, who stopped L.S. while she was driving her car erratically. He stated she was moderately intoxicated. The court subsequently entered an order terminating her parental rights. L.S. has appealed.

L.S. contends there is not clear and convincing evidence pursuant to section 232.116(1)(k) she has a severe substance abuse problem which presents a danger to herself and A.S. She also maintains the State has not shown her prognosis is such A.S. could never be returned to her care. L.S. also contends the State failed to prove A.S. could not be returned as provided in section 232.102. She lastly alleges the juvenile court erred in allowing the State to reopen the proceedings after the State had rested its case based on subsequent events. She claims she was prejudiced because she had no opportunity to prepare and respond to the police officer's testimony.

I. Termination of Parental Rights.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 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.

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 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 Dameron, 306 N.W.2d at 745).

In this case, the juvenile court granted termination of the mother's rights pursuant to Iowa Code section 232.116(1)(g) and (k) (1993). Iowa Code section 232.116(k) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

All three statutory elements are met here. The juvenile court correctly concluded termination of the mother's parental rights would be in the best interests of the child.

A.S. was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) and 232.6(n) on June 21, 1991; June 2, 1993; and February 1, 1994. On each adjudication custody was transferred from the parent to the department of human services for placement in foster care.

Additionally, L.S. continues to have a severe chronic alcohol abuse problem which presents a danger to herself and others as evidenced by her prior acts. The evidence shows a long-standing substance abuse problem not successfully treated by numerous inpatient and outpatient treatment programs attended over many years. The mother was unwilling to attend a dual diagnosis program which could address her alcohol abuse and mental health in a structured living environment. The mother refused to attend even when transportation for visitation with her daughter was arranged. The mother has been arrested

several times for alcohol abuse related charges, including theft, drunkenness, disorderly conduct, criminal trespass, and operating a vehicle while intoxicated. The mother has been found passed out and unclothed outside.

Further, L.S.'s prognosis indicates her child will not be able to be returned to her within a reasonable period of time considering the child's age and need for permanency. L.S. is clearly not a proper caretaker. She often goes on drinking binges, and she then becomes a very combative, assaultive person. At these times she is simply unable to act as a caretaker. A child need not endlessly await the maturity of his or her natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." In re L.L., 459 N.W.2d 489, 495 (Iowa 1990). Our de novo review of the record forces us to the inescapable conclusion termination of her mother's parental rights are in A.S.'s best interest.

II. Reopening the Record.

In the case at bar, the State asked to reopen the evidence following the arrest of L.S. on numerous charges. The juvenile court granted the motion. We review for an abuse of discretion. In re J.R.H., 358 N.W.2d 311, 319 (Iowa 1984).

We conclude the juvenile court did not abuse its discretion. The factual allegations leading up to the motion to reopen the evidence were of the same type which brought this case to court in the first place. A.S.'s best interests dictate the evidence should have been admitted. Further, our decision here would have been the same even without the additional evidence. The juvenile court is also affirmed on this issue.

AFFIRMED.