IN THE COURT OF APPEALS OF IOWA

No. 8-241 / 97-2050

IN THE INTEREST OF J.L., J.B., and S.M., Minor Children,

J.M., Father,
Appellant,

S.M., Mother,
Appellant.

FILED
MAY 29 1998
CLERK

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile, Judge.

A mother and a father appeal from the termination of their parental rights. **AFFIRMED.**

John S. Moeller of O'Brien, Galvin & Moeller, Sioux City, for appellant father.

Douglas L. Roehrich, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

Joseph Kertels, Sioux City, for minor children.

Teri Post, Sioux City, guardian ad litem for children.

Considered by Cady, C.J., and Huitink, and Vogel, JJ.

CADY, C.J.

A mother and father appeal from the termination of their parental rights. The mother contends termination was not in the children's best interests. The father argues there was not sufficient evidence to support the termination of his rights.

Nancy is the mother of John, born in 1988, Joshua, born in 1989, and Samantha, born in 1993. Ricky is the father of John, Loren is the father of Joshua, and James is the father of Samantha. Ricky and Loren did not appeal the termination of their parental rights.

Nancy is a chronic alcoholic. Her children were removed from her care in September 1995 and were subsequently adjudicated children in need of assistance (CINA). Nancy did not enter a treatment program until May 1996 and did not see her children for nearly a year after their removal. In November 1996, approximately fourteen months after the children had been removed, Nancy entered a program which allowed them to be returned to her care. In February 1997 Nancy and the children were allowed to move to their own apartment as part of an aftercare program. Within a month, Nancy had relapsed and was drinking to the point of intoxication. She voluntarily agreed to return the children to foster care.

James has a long criminal history and was in prison when Samantha was born. For about two and one-half years his whereabouts were unknown and he had no contact with Samantha. James was released from prison and contacted the Iowa Department of Human Services (DHS) in September 1996 seeking contact with his daughter. He

violated DHS rules pertaining to supervised visits and inappropriately expressed anger in front of Samantha. Some of his conduct was perceived as threatening, and James was not cooperative with DHS services.

A petition to terminate parental rights was filed in June 1997. At the time of the termination hearing, Nancy had married, moved to a city where she felt she had more family support, and had been sober for approximately five months. James abruptly left the courtroom shortly after the termination hearing commenced. He did not testify but voiced his objection to DHS involvement in the case.

The juvenile court terminated Nancy's rights pursuant to Iowa Code sections 232.116(1)(c) and (k) (1997).[1] It terminated James' parental rights pursuant to Iowa

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[1] Iowa Code sections 232.116(1)(c) & (k) state:

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

k. The court finds that 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.

Code sections 232.116(1)(c), (d), and (e).[2]

We review proceedings to terminate parental rights de novo -- we may review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Weight is accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses, but they are not binding. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

The Iowa Supreme Court has recognized there exists a parental interest in the integrity of the family unit, but that such interest is not absolute and may be forfeited by certain conduct. *Dameron*, 306 N.W.2d at 743. The State has the duty to see every

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[2] Iowa Code sections 232.116(1)(d) & (e) state:

d. The court finds that all of the following have occurred:
(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.
(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

e. The court finds that all of the following have occurred:
(1) The child is four years of age or older.
(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

On appeal, Nancy does not dispute that the State proved the statutory grounds for termination. Instead, she argues termination was not in the children's best interests since she is now able to deal with her alcohol addiction and has the support of her family to help her.

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Continuing inability to overcome substance abuse can be the basis for finding termination is in the child's best interest. *In re R.J.*, 436 N.W.2d 630, 635 (Iowa 1989); *In re A.C.C.*, 426 N.W.2d 682, 683 (Iowa App. 1988). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Nancy has exhibited strong resistance to entering treatment, even if it meant losing custody of her children. The record reveals she has a tendency to relapse quickly and to return to past behaviors which endanger her children. Her relapses occur even after intensive treatment. "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 at 495. We find the trial court correctly terminated her parental rights in the best interest of the children.

James contends there was not sufficient evidence to support the termination of his parental rights. First, he claims he was never offered services for the purpose of correcting the circumstances which led to the CINA adjudication. The original adjudication was based on Nancy's actions. We find no evidence in the record James raised this issue before the trial court. Matters not raised in the trial court, including constitutional questions, cannot be raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). James failed to preserve error on this issue.

Next, he argues he was never given the opportunity to resume caring for Samantha. He also asserts services were not offered to him. We disagree. After his release from prison, James sought renewed contact with Samantha. The case permanency plan contained various terms and conditions with which James was to comply. He did not go to court-ordered testing until the month before the termination

hearing. He did not attend counseling or therapy. He was highly resistant to the involvement of the Department of Human Services in his life. Because of his refusal to comply with the terms and conditions of the case permanency plan, visitation with Samantha remained supervised until it was suspended in June, 1997. We conclude James did not put himself in a position to resume caring for Samantha, despite knowing the requirements of the case permanency plan. We find the trial court correctly terminated his parental rights under Iowa Code section 232.116(1)(d).

Finally, James asserts the State failed to prove Samantha could not be returned to his care. He claims his extensive criminal history does not mean that he cannot parent his child. We need not address this claim, having determined termination was appropriate under Iowa Code section 232.116(1)(d). We can affirm a termination if clear and convincing evidence supports any ground for termination. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). In addition, because James did not cite or argue any authority in support of his claim, we deem it waived. Iowa R. App. P. 14(a)(3); *Luke v. State*, 465 N.W.2d 898, 903 (Iowa App. 1990).

For the reasons set forth above, we affirm the juvenile court's order terminating the parental rights of Nancy to John, Joshua, and Samantha and of James to Samantha.

AFFIRMED.