FILED
OCT 2 0 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF M.W., T.W., AND J.W., Children.	)	
	)	281
C.O., Natural Mother,	)	8-530 / 88-440
Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County (No. 12-1094) - James Heckerman, District Associate Judge.

The mother of three children appeals a juvenile court order discontinuing her visitation and directing the State to file a petition to terminate her parental rights. **AFFIRMED.**

John W. Kocourek, Council Bluffs, for the appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Martha Heinicke, Assistant County Attorney, for the appellee State.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

The three children involved here were previously adjudicated to be children in need of assistance and placed in foster care. The mother appeals a juvenile court order discontinuing her visitation and directing the State to file a petition to terminate her parental rights. Our review of proceedings regarding the termination of parent-child relationships is de novo. We accord weight to the fact-findings of the juvenile court, especially when considering the credibility of the witnesses the court has heard and observed firsthand, but we are not bound by them. We affirm.

The three children involved in this proceeding are a boy born in March 1980, a girl born in April 1981, and a boy born in April 1982. The two older children are full siblings. The youngest child has the same mother but a different father.

In 1981 the two older children were adjudicated to be children in need of assistance due to physical abuse, inadequate medical care, and their parents' unstable marriage. The two older children were placed in foster care for over a year.

In 1983 the children were returned to their mother, C.O., who by this time had divorced the two older children's father, had given birth to the youngest child, and had remarried. In spite of a physical abuse report and

a denial of critical care report, the CHINA proceeding was later terminated.

In April 1984 all three children were once again adjudicated to be children in need of assistance. There was evidence that the stepfather had sexually abused the two older children and had physically abused all three children. There was also evidence of neglect, inadequate supervision, and filthy living conditions. At that time the oldest child was placed in foster care due to severe emotional and behavioral problems, while the other two children were placed with the mother on condition they have no contact with the stepfather. However, a social worker had made an unscheduled visit to the home and found the children in the care of the stepfather. At that time the two younger children, J.W. and M.W., were placed in foster care.

The oldest child has remained in foster care since 1984. The girl was returned to the mother's care in July 1985, and the youngest boy was returned to her care in July 1986. However, within a month after the youngest child's return, both children were taken into police custody twice after wandering away from the mother's home. The children wandered away in search of food because they were hungry. In October 1986 the two younger children were returned to foster care. All three children have remained in foster care since that time.

In a series of subsequent review orders, the juvenile court discontinued the later resumed visitation between the mother and the children. It was noted that visitation caused the children anxiety and resulted in behavioral problems. In a February 1988 review order, the juvenile court once against discontinued all visitation. At the same time, the juvenile court directed the State to file a petition for termination of the mother's parental rights with respect to all three children.

I.

Appellant first contends that the trial court violated her right, as a parent, to attend counseling relying on Iowa Code section 232.98(1)(c). However, we find this section to apply to a situation where the child is staying in the hospital. See Iowa Code § 232.98(1)(c) (1987).[1]

---

1. An examination ordered prior to the adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed fifteen days if all of the following are found to be present:

* * * *

c. The child's attorney agrees to the commitment. An examination ordered after adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed thirty days. The child's parent, guardian, or custodian shall be included in counseling sessions offered during the child's stay in a hospital, facility, or institution when feasible, and when in the best interests of the child and the child's parent, guardian, or custodian. (Emphasis added.) Iowa Code § 232.98(c) (1987).

This claim involves a situation of outpatient counseling which included the children. After an apparent outburst on the part of the mother-patient and a determination by the doctor that the mother-patient was not open-minded to or able to work well in therapy the doctor discontinued his services. We do not find this statute applicable.

II.

Appellant next claims that the cessation of visitation with J.W. was not in the child's best interest. J.W.'s behavior would indicate that a cessation of visitation is in his best interest. J.W. has constantly had problems with soiling and wetting his pants, with the use of foul language and with aggressive behavior. He has even had to be hospitalized for his behavior. His behavior clearly gets worse around visitation. Dr. Beischel supported this finding of termination of visitation. We find that J.W.'s best interests are served by the cessation of visitation.

III.

Appellant's third argument is that the trial court erred in ordering the initiation of termination proceedings. In In Interest of A.C., the court stated:

> It is unnecessary to take from the children's future any more than is demanded by statute. Stated otherwise, plans which extend the twelve-month period during which parents attempt to become adequate in parenting skill should be viewed with a sense of urgency.

415 N.W.2d 609, 614 (Iowa 1987).

In this case, these three children have been in and out of foster care since the middle of 1981. The dismissal of one CHINA case has resulted in the initiation of another. The return of the children to their mother has resulted in their removal. The seven-year attempt at rehabilitation has taken its toll on these children.

Appellant notes that her children's attempts to avoid visitation and to avoid being returned to her custody should not be allowed to manipulate the system. We note that the record indicates that there are some serious relationship problems which cause such behavior.

Given the amount of time these children have been in parentless limbo, we find that the trial court correctly ordered the initiation of termination of parental rights proceeding.

IV.

Appellant's last contention is that the curtailment of visitation pursuant to an order dated October 1987 was error.

After July 1987, C.O. had court-ordered visitation rights with J.W. and T.W. The length of that visitation was at the discretion of Dr. Beischel. This visitation was terminated due to T.W.'s allegations of sexual abuse by the mother. Dr. Beischel recommended that visitation between C.O. and all three children be halted. C.O. was instructed to keep in contact with the social worker regarding the investigation into these allegations and the possible

restitution of visitation. The matter went before the trial court in October 1987. The trial court held that DHS had acted properly.

The present appeal is from the January 1988 order. Appellant did not appeal the October 1987 issue. We find this matter not properly preserved for appeal.

AFFIRMED.