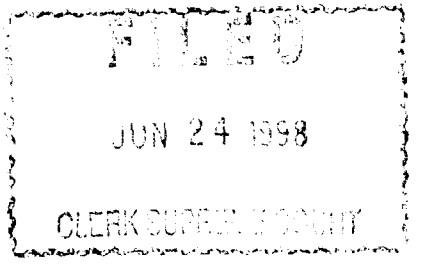
IN THE COURT OF APPEALS OF IOWA

No. 8-311 / 98-0059
Filed June 24, 1998



IN THE INTEREST OF L.R.M., Minor Child,

T.M., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

The mother appeals from the termination of her parental rights. **AFFIRMED.**

John C. Nelson of Molstad & Thomas, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee.

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

STREIT, J.

Tiffany is the mother of Leandra, born June 12, 1997. At the time of Leandra's birth, Tiffany was seventeen years old, had been adjudicated a child in need of assistance herself, and was living in foster care. Tiffany consented to a voluntary placement of Leandra so they could reside in the same foster care home. However, after concerns were raised about Tiffany's ability to care for her, Leandra was moved to another foster care home on July 15, 1997. Tiffany, who had since turned eighteen, left her foster home shortly after Leandra was removed.

Leandra was adjudicated a child in need of assistance on August 25, 1997, by stipulation of the parties. From July through September, Tiffany resided with a succession of friends and with her mother. On September 5, 1997, she left Sioux City and resided with a man from Dayton, Ohio, whom she met over the telephone through a "people meeting" service. When he gave her money to return to Sioux City, Tiffany moved to Cedar Rapids instead, again to stay with people she met through a telephone "people meeting" service. She then moved to Illinois, then to California where she resided at the time of the termination hearing. Although Tiffany had agreed to accept family-centered services, she was not available to participate in them due to her transient lifestyle.

A petition to terminate Tiffany's parental rights was filed October 28, 1997. The termination hearing was held November 25, but Tiffany did not appear. Her counsel said he had not been in contact with her for over sixty days although he had

made numerous attempts to contact her. A case worker from the Department of Human Services said she had been in recent contact with Tiffany and Tiffany was aware of the date of the termination hearing.

The court terminated Tiffany's parental rights pursuant to Iowa Code sections 232.116(1)(a), (b), and (h) (1997).[1] Leandra's father voluntarily consented to the termination of his parental rights and they are no longer at issue.

We review proceedings to terminate parental rights de novo—we 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). We give weight to 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). Our primary concern is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995).

On appeal, Tiffany claims the State did not prove all of the statutory elements for the termination of her rights and it did not provide her enough time or appropriate

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[1] Iowa Code sections 232.116(1)(a), (b), and (h) read, in pertinent part:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

h. (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

services to enable her to improve her parenting skills. The State concedes the statutory grounds under section 232.116(1)(a) were not met. However, it contends it met its burden of proof with respect to Tiffany's abandonment of Leandra and her nonamenability to services. *See* Iowa Code §§ 232.116(1)(b) and (h). The State claims Tiffany did not challenge the services provided before the juvenile court and has waived that issue on appeal.

If a district court terminates parental rights on more than one statutory ground, we only need find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996) (citing *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App.1995)).

I. ***Consent.*** From our de novo review of the record, we do not find clear and convincing evidence Tiffany voluntarily relinquished her parental rights to Leandra. *See* Iowa Code § 232.116(1)(a). In contrast to the father's voluntary termination, Tiffany did not sign a voluntary relinquishment. It was stipulated the case worker would testify Tiffany said she would consent to a voluntary termination.

II. ***Abandonment.*** The record contains clear and convincing evidence Tiffany has abandoned Leandra. Tiffany chose to stop caring for and visiting Leandra, choosing instead to wander around the country pursuing relationships with strangers she met over the telephone. Tiffany made no effort between early September 1997 and the termination hearing in November to maintain any contact or

relationship with her daughter. She did not assume any of the normal parental functions or provide any support. Tiffany did not make any effort to fulfill the goals of the case plan or to avail herself of the services available through the Department.

In addition, because Tiffany did not raise this issue at the termination hearing, she has not preserved it for review. 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). We, therefore, affirm the juvenile court's termination of Tiffany's parental rights to Leandra under Iowa Code section 232.116(1)(b).

III. Time to remedy. Because we affirm the termination under Iowa Code section 232.116(1)(b), we need not address Tiffany's claims relating to section 232.116(1)(h). *In re A.J.*, 553 N.W.2d at 911. Tiffany also failed to raise these claims in the trial court, so she has not preserved them for appellate review. *In re C.D.*, 508 N.W.2d at 100.

Even if we were to address the merits of Tiffany's claims concerning the offer of services and the time necessary to remedy her deficiencies, we would find termination proper. Tiffany refused the offer of services and made herself unavailable to the Department, its service providers, and to Leandra. A parent's past 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). Tiffany has created the error of which she

complains. She cannot now exploit such error. *Knudsen v. Merle Hay Plaza, Inc.*, 160 N.W.2d 279, 285 (Iowa 1968) (citing *Hackman v. Beckwith*, 64 N.W.2d 275, 281, 245 Iowa 791, 799 (Iowa 1954)).

AFFIRMED.