

IN THE COURT OF APPEALS OF IOWA

No. 4-036 / 93-1420

FILED

FEB 25 1994

CLERK SUPREME COURT

IN THE INTEREST OF B.W. and K.W., Minor Children,
K.K., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County,
Ray A. Fenton, Judge.

Kristey appeals the decision of the district court
terminating her parental rights to Brook and Kevin.

AFFIRMED.

Scott M. Wood, Ankeny, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; Kathrine S.
Miller-Todd, Assistant Attorney General; John P. Sarcone,
County Attorney; and Marcia L. Schober, Assistant County
Attorney, for appellee State.

Cory McClure, Des Moines, for minor children.

William Brewer, West Des Moines, for D.K., father of
B.W.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

DONIELSON, J.

Kristey is the mother of Brook and Kevin. Kristey left Kevin's father, Terry, to escape domestic abuse, leaving Brook and Kevin with Terry. The children resided with Terry from August 1990 until February 1992, during which time four founded child abuse reports named Terry as the perpetrator of physical abuse and denial of critical care. The children were removed from Terry's care in February 1992 and placed in foster care. Kristey did not see Brook and Kevin between August 1990 and February 1992.

Kristey visited with her children weekly between March 19 and April 23, 1992. On May 7 the children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused child), (6)(c)(2) (failure of parent to supervise adequately) and (6)(n) (parent's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care) (1991). The case permanency plan called for Kristey to meet regularly with and provide all necessary information to case workers, complete individual counseling and parenting classes, establish a home, and visit with the children.

By dispositional order filed June 8, 1992, the children were confirmed CINA and placed in the custody of DHS for continued foster care placement. Kristey was ordered to attend individual therapy. She completed an intake evaluation at Broadlawns in July 1992, but did not follow

through with counseling or parenting classes. She gave birth to another son on September 22, 1992. On December 18, 1992, the juvenile court filed a review order, continuing the children's placement in foster care and ordering Kristey to cooperate with DHS and the case plan.

A petition to terminate parental rights was filed on May 5, 1993, noting Kristey's last visit with Brook and Kevin was June 18, 1992. Service of notice to Terry of the termination hearing was waived because attempts to locate him were unsuccessful. Terry's court-appointed counsel was allowed to withdraw because he had had no contact with Terry for over a year.

At the termination hearing on June 22, 1993, evidence of Kristey's lack of progress toward case plan goals was presented. She had visited her children seven times in sixteen months (thirty-three months, if the time prior to the children's removal is included). She, her new son, and her boyfriend lived at a friend's apartment with the friend's boyfriend and three children. Kristey did not attend parenting classes or individual therapy. Her children did not recognize her as their mother. Kristey testified she had attended visits between February 1992 and June 1992, had found employment, and had attended psychological and parenting evaluation. She testified she had not visited Brook and Kevin recently because she was working or caring for the new baby or out of money, precluding a phone call to set up visitation. She

testified she wanted her children back and that she believed reunification could occur in approximately three months. The district court terminated Kristey's parental rights.

Kristey appeals.

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. In re L.L., 459 N.W.2d 489, 493 (Iowa 1990); Iowa R. App. P. 14(f)(7).

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).

The State has the duty to see that every child within its borders receives proper care and treatment, and must act when parents abdicate that responsibility. In re I.L.G.R., 433 N.W.2d 681, 689 (Iowa 1988). "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). "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.

When the criteria of Iowa Code section 232.116(1)(e) (1993) are met, the legislature "has made a categorical determination that the needs of a child are promoted by termination of parental rights." In re M.W., 458 N.W.2d 847, 850 (Iowa 1990). The requirement of section 232.116(1)(e)(4) "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). The State must prove the grounds by clear and convincing evidence. In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). If any of the grounds of section 232.2(6) can be proven by clear and convincing evidence, termination is appropriate. In re M.W., 458 N.W.2d 847, 850 (Iowa 1990). We view cases where the children have been out of a parent's custody for twelve months or longer with a sense of urgency. In re L.L., 459 N.W.2d at 495; In re A.C., 415 N.W.2d 609, 614 (Iowa 1988).

Kristey has not had custody of Brook and Kevin for three years. She has not made any effort to support the children during that time. Other than a few visits during March, April, and June 1992, Kristey has not visited her

children. Service providers have made repeated attempts to arrange visitation without success. Kristey has not shown the ability to secure and maintain a stable home for her children. She has moved frequently and currently lives with her boyfriend and their child in an apartment with a friend and three other children. Kristey completed a psychological and parental intake evaluation in July 1992, but did not participate in any of the recommended therapy or parent skill development classes. Even though she has met with DHS and CASA workers and agreed to participate in developing her parental skills, she has repeatedly failed to follow through. We find clear and convincing evidence the children cannot safely be returned to her care because she would be unable to exercise a reasonable degree of care in supervising her children or supplying them with adequate food, clothing, and shelter. In addition, by leaving her children with Terry initially, she demonstrated her inability to care for the children and protect them from harm.

For the reasons stated, we find the children cannot safely be returned to Kristey's custody. We determine, therefore, the district court correctly terminated Kristey's parental rights to Brook and Kevin.

AFFIRMED.