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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed January 26, 1983

IN THE INTEREST OF J.L., d.o.b. 6-9-76,)
J.L., d.o b 4-24-78,
J.L., JR., d.o.b. 2-20-80, Children,)

J.L. AND J.L., Parents,)

Appellants.)

2-461
3-68368

Appeal from Hancock District Court - Ralph McCartney, Judge.

Natural parents of three children appeal from the juvenile court's order terminating their parental rights, asserting that the evidence was insufficient to support the juvenile court's conclusion that the children should not be returned to the parents' custody. AFFIRMED.

Philip L. Garland, Garner, Iowa, for appellants.

Thomas J Miller, Attorney General, and Brent Hege, Assistant Attorney General, for the State.

Erwin Buck, guardian ad litem for the children.

Heard en banc

PER CURIAM

The three children involved in this proceeding were adjudicated to be children in need of assistance in June 1980. The children were then placed in foster homes. In October 1981 the State filed a petition asking that the parental rights of the natural parents be terminated as to all three children on the ground stated in Iowa Code § 232.116(5) (1981). The juvenile court granted the State's petition and terminated the parental rights. The natural parents have appealed, challenging the sufficiency of the evidence to support the juvenile court's conclusion that the children could not be returned to their parents. We affirm.

I. Scope of Review. Appellate review of proceedings to terminate a parent-child relationship is **de novo** and, while we accord weight to the findings of the trial court, we are not bound by those findings. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

II. Termination of Parental Rights. On the merits, appellants assert that there is no clear and convincing evidence that the child cannot be returned to their custody as provided in section 232.102. In examining the record before us, we are guided by well established principles which were stated by the court in the Dameron case.

> Central to a determination of this nature are the best interests of the child. [citation] In this connection, we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insights for those determinations can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. [citations]
>
> This court has often recognized that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but that it may be forfeited by certain parental conduct. [citations] Because the State as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. [citations]

> Furthermore, it is our view that the current statutory termination provisions applicable here, like those they replace, are preventive as well as remedial. The provisions therefore mandate action to prevent probable harm to a child and do not require delay until harm has occurred. [citations]
>
> Finally, as previously noted, the grounds alleged here for the termination of parental rights must by statute be proven by clear and convincing evidence. [citation]

306 N.W.2d at 745.

The primary issue presented to this court is whether the State proved by clear and convincing evidence that the children could not be returned to their parents within the meaning of section 232.116(4)(c). It is not disputed that the children had been outside the parental home for twelve months, see § 232.116(4)(b), and had been adjudicated children in need of assistance. See § 232.116(4)(a).

The record reflects that all three children were adjudicated to be in need of assistance on June 16, 1980. The oldest child was placed in a foster home and the two youngest remained in their parent's home. The reason for removing the oldest child appears to have been due to numerous unexplained bruises upon various parts of the child's body. Two months later the court also removed the two younger children from the home and placed them in foster care. The youngest child suffers from a mental dysfunction which requires special education and parental patience and care.

It appears from the record that both parents had several problems. It is evident they both had a problem with alcohol. There is also evidence in the record that the father physically abused the mother; he was also ordered not to use physical corporal punishment on the children. Many problems of the parents apparently arise from their intellectual limitations. The father was experiencing considerable problems in coping with reality. Based upon his belief that he was part Indian, he asserted he was going to send his eldest son to the "Tribe" for the summer. He further stated that the "Tribe" would kill those whom its members

considered to be their apparent enemies. With regard to his failure to pursue counseling, the father stated that Indians do not like "head shrinkers" and that psychologists were bad luck because visits with the psychologist resulted in flat tires, in his falling off roofs and in being bitten by a bat. On October 20, 1980, the father was taken to the State Mental Health Institute located in Cherokee for an evaluation. He left that institution because the authorities found the problem to be retardation.

The mother had deep psychological problems prior to marriage. During a psychiatric evaluation in July 1980 she was found to be suffering from visual hallucinations regarding her mother's decomposed body which was discovered in a city park a year prior to the evaluation. She was also found by the psychiatrist to be belligerent and intellectually in the dull-normal range. Additionally, she exhibited possible schizoid afflictions.

The condition of the parents since the CHINA proceeding has not improved. The father has essentially refused any counseling and the mother has made only the feeblest of attempts. Their excuse for failure to attend counseling is predicated on the high price of gas in driving to their appointments. Yet the record reflects that the parents did not attend sessions even when scheduled at satellite offices nearer their residence. In October 1980 the parents were evicted from their residence for failure to pay rent. The landlord had offered the father the opportunity to exchange the father's labor for rent. The father did not take advantage of this offer. Often the parents were without utilities due to their nonpayment. In July 1980 the parents took in a 16-year-old girl who was pregnant by another man. According to the father she was one of the large groups of laborers either employed or to be employed by him for the purposes of weeding bean fields. There is evidence from the mother in the record that the girl and the father participated in a sexual affair. In August 1980 the mother received "Door Opener Shelter" having been told to get out of the residence by the father. In

April 1981 the parents moved into a trailer home on the farm of the father's protective payee.[1]

The income of the couple consisted of food stamps and social security insurance benefits. The father also exchanged labor for rent and for gasoline to operate his truck. He worked, however, much fewer hours than the 12 hours a day to which he testified. Home services were discontinued by the department at the parent's trailer home because of the uncooperative attitude of the parents toward learning the most rudimentary aspects of housekeeping and sanitation.

In contrast to the parents' failing condition, the children have shown marked improvement in foster care. The daughter, when placed in foster care, had a mild bladder infection, an iron deficiency and worms. The eldest son also had worms. Intellectually, the oldest child had a 48% improvement in his development and functioning skills in a 12-month period following his removal from the home. This was reflected in a 34 point increase in his I.Q. The daughter showed an increase of 23% in functioning ability after her removal from the home. Despite those improvements, after periods of visitation with his natural parents, the eldest child would pull his hair, bite his nails, withdraw from others, and cry for no explainable reason. The evidence reflects that parental visitations had deleterious effects on all the children.

We believe, as does the psychologist, that neither parent has recognized or realized the precedence of the children's needs over his or her own. The parents were uncooperative in receiving any assistance in improving their parental abilities. Yet they profess love for their children. While their affection may be commendable, it cannot be allowed to overrule the children's best interests where it appears that the parents cannot cope with the responsibilities of parenthood.

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[1] A Mr. Devine had been named "protective payee" due to the father's receipt of social security benefits.

See In re Scarlett, 231 N.W.2d 8, 11-12 (Iowa 1975). The parents themselves support the testimony of witnesses for the State that they are not now able to care for the children and there is no foreseeable time when they will be able to do so. On the basis of our review, we conclude that the trial court did not err and, accordingly, affirm the terminaton of the parental rights of both the mother and father.

AFFIRMED.