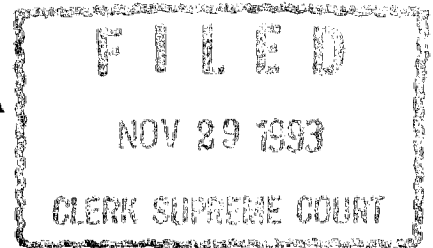


IN THE COURT OF APPEALS OF IOWA

No. 3-454 / 92-2038



IN THE INTEREST OF J.C.N./D., A.E.N., N.A.N., N.J.N.,
D.S.P. and M.R.P., Minor Children.

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T.N., Mother,
Appellant.

W.R.P., Father,
Appellant.

Appeal from the Iowa District Court for Polk County,
Vincent M. Hanrahan and Larry J. Eisenhower, Juvenile
Judges.

T.N. and W.R.P. appeal from a judgment of the district
court terminating their parental rights. **AFFIRMED.**

Carol L. Coppola of Coppola, Trout & Taha, Des Moines,
for appellant mother, T.N.

Wendell J. Harms, Des Moines, for appellant father,
W.R.P.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; Judy Sheirbon,
Assistant Attorney General; and Ray M. Blase, Assistant
County Attorney, for appellee State.

J. Michael Mayer, Des Moines, guardian ad litem for
minor children.

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

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DONIELSON, P.J.

Tammy, the mother of six children; Joshua born October 18, 1983; Alecia born November 15, 1986; Nicholle born November 26, 1987; Nickolas born May 6, 1989; Daniel born June 6, 1990; and Matthew born July 19, 1991, appeals a juvenile court order terminating her parental rights. Willie, the father of the two younger children, also appeals. The four older children have a different father who is not a party to this appeal.

This family has been under court scrutiny since 1986, when the State filed a CINA petition. The parties stipulated the allegations in the petition were true, but agreed to delay further proceedings so long as the parents cooperated with the services provided. In the following years, as more children were born, the children were in and out of the home, services were provided, there were instances of child abuse, and Tammy started living with Willie in an abusive relationship.

On January 6, 1992, all the children were adjudicated CINA. On April 15, 1992, an emergency order was entered ordering the children's removal from parental care. The six children were forcibly removed from their mother's care by two uniformed police officers. They were placed in four different care situations. Two girls were placed together, two boys were placed together, and one boy was placed alone in foster care. The oldest child, Joshua, was placed in a shelter care home on removal on April 15; then in the Child

and Families of Iowa home on August 23, 1992 with Matthew. The children were not placed together--but we doubt that it would have been easy to find a foster home ready to accept the overwhelming responsibility of the six children.

On June 4, 1992, the court entered a plan for parental education, money management, in-home assistance therapy, and supervised visitation. The matter was continued until December 1992. Then on July 6, 1992, a little more than one month after the plan was approved, a petition to terminate the parental rights of the two fathers, Damon and Willie, and the mother, Tammy, was filed.

The matter came on for hearing and on November 25, 1992, the juvenile court terminated parental rights including in its finding, the following:

Iowa Code Section 232.116(2)(a)(1991) provides that the Court in considering a termination of parental rights . . . is also permitted to consider whether the parents' ability to provide the needs of the children is affected by the parents' mental capacity. Tammy's mental disability is a proper factor for this Court to consider in determining whether these children have been and will be neglected to the point where their interest and welfare require termination. In re T.O., 470 N.W.2d 8, 11 (Iowa 1991).

Here, the Court is presented with a family who has struggled in what the Court believes to be a genuine attempt, considering the limitations of the family, to become adequate parents. The Court closed a previous proceeding based upon a conclusion that no further services were available through the Court to assist the family in May, 1991. This was after a five-year extensive effort on behalf of the family by the Department of Human Services. Despite these services the family was back in Court in less than five months, after Joshua was physically abused.

The Court concludes that Tammy, while capable of caring for an infant and perhaps even caring for more than one small child, is unable to deal with the rigors of motherhood presented by children as they become older. She is particularly unable to understand and adequately deal with Joshua's special needs. She is overwhelmed by the requirements of caring for six children. Her limited intelligence prevents her from learning, despite repeated and concentrated efforts, what it takes to be an appropriate parent.

Tammy, in her appeal, contends there is not clear and convincing evidence supporting the finding her parental rights should be terminated. Willie, the father of the two youngest children, contends there is not evidence to support the trial court conclusion that reasonable efforts were made before removal, the court should not have terminated his parental rights, and the children's best interests are not served by doing so.

The State responds to the parents' arguments with a litany of the parents' problems, including the fact visits to the home by Department of Human Services caseworkers found the home chaotic and the mother frequently on the couch yelling at the children; the fact the parents have not done as they were told by a series of workers; the fact the parents have questioned services; the fact the parents have not learned parenting skills; and the fact these children will not have proper intellectual stimulation in their home.

An examination of the numerous reports, letters, and exhibits in the record shows substantial involvement by a

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number of providers in this family's life. There are complaints that there was bruising on the children, the parents were spanking with a belt and coat hangers, leaving the children alone for an hour, locking the children out of the house, and improperly disciplining the children. Tammy had improper meal plans and poor money management skills. There was domestic violence. The children had poor attendance at day care, missed medical appointments, had head lice, wore improper clothing, and there were rats in the home. On October 23, 1992, Willie entered an Alford plea to assault causing injury to Joshua.

Reports make it clear the family lives at the poverty level and, as the juvenile court found, Tammy is frequently overwhelmed by her six children including Joshua, who has below normal intelligence, has special needs, and presents problems that would make it difficult for any parent to care for him.

Tammy, age twenty-nine and pregnant with her seventh child, is limited in her intellectual abilities. She is able to function intellectually at the level of a ten year old. She truly loves her children and they love her. Tammy took advantage of the opportunities to visit her children when they were in foster care. Her life has been devoted to her children. There have been a number of services offered. Sometimes Tammy has cooperated; frequently she has not cooperated.

The attorney for the parents argues the removal was the result of the physical abuse by Willie and prior to that time there had been numerous workers in and out of the home and the children were not removed. The attorney also suggests while services were offered, this is not entirely a negative on the parents' part because the mother completed some of the services and other services were transportation assistance, protective payee services, and protective day care and handicapped preschool. They argue this is a case where service providers have simply grown tired of providing services to this family. While the June 4, 1992, Case Permanency Plan offered to the court on June 4, 1992, said the goal was family reunification, a month later a petition to terminate parental rights was filed.

Our de novo review has indicated to us the trial court correctly applied Iowa case law in considering Tammy's mental capacity. See T.O., 470 N.W.2d at 11. We also agree that Tammy's limited mental capacity limits her ability to parent the children adequately and to learn parenting skills.

There are skills the parents probably cannot learn, such as money management and the ability to provide intellectual stimulation for their children. Joshua also, because of his intellectual limitations, will remain a particular challenge. If the children were to be returned to the parents, it would be necessary that the parents have

hands-on services, including money management and out-of-the-home day care where the children can obtain the needed intellectual stimulation. Obviously, some of these problems would be eliminated when the children are all in school. However, Tammy's inability to parent six children without extensive services is clear from the record. Even with intensive help from service providers this family is unable to function so as to provide a safe, secure home for the children. Between May 1986 and May 1992 there were twenty-three founded reports of child abuse. There is concern Tammy is using cocaine. Willie's problems with substance abuse and domestic abuse do not allow us to return the children to Tammy as long as Willie is in the home. Tammy's past history of lack of cooperation with service providers indicates the extensive services necessary to enable her to function as a parent likely would not be accepted on any long term basis. In the Interest of L.L., 459 N.W.2d 489, 493-94 (Iowa 1990); Harter v. State, 149 N.W.2d 827, 829 (1967).

The dissent cites a 1990 report by Norm Ostbloom to assert "with extensive and continuous services the family unit could be preserved." We disagree. The report was written after four weeks of work with the family just after the birth of Tammy's fifth child. Willie was in the home and was assisting as a parent. Since then the court has ordered Willie not to have contact with the children because he abuses them. Tammy has had two more children.

If the family was functioning only adequately with five children and services provided, we see no way Tammy can safely parent seven children by herself, even with intensive services from the State. Returning the children to Tammy would only place them in danger.

We are directed to look to the best interest of the child. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984); In re Dameron, 306 N.W.2d 743, 747 (Iowa 1981); In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). In our de novo review of the record, we find the children cannot safely be returned to Tammy's care. Nor can they be entrusted to Willie's care. The children deserve "a safe, healthy and stimulating environment in which to grow and mature." In the Interest of J.W.D., 456 N.W.2d 214, 217 (Iowa 1990). Neither parent can provide such an environment.

We recognize the State has not presented any plan for adopting out the children as a group. The likelihood of all the children going to the same home is small. Yet because of instances of abuse in the home, the children have not all lived together for much of their lives. Joshua in particular needs special care. The record is clear that, even though the State cannot guarantee the children will be placed together, placement in foster homes or adoptive homes separately is still better for the children than placing them in imminent danger of harm with Tammy or Willie.

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We find the best interests of the children will be served by terminating Tammy and Willie's parental rights. Accordingly, the decision of the juvenile court is affirmed.

AFFIRMED.

Hayden, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur with the majority that the legal grounds for termination have been met. However, my inquiry does not end there. We are directed to look to the best interest of the child. In re J.R.M., 358 N.W.2d 311, 317 (Iowa 1984); In re Dameron, 306 N.W.2d 743, 747 (Iowa 1981); In re D.L., 401 N.W. 2d 201, 202 (Iowa App. 1986). It is not possible for me to determine the best interest of these children from this record.

Termination of parental rights severs the biological ties a child has with his or her parents. It does not assure the children adoptive homes nor any permanency.

In Iowa last year, 263 special-needs children were freed for adoption, but only 138 were adopted. Phoebe Wall Howard, 'Special-needs' Kids Pray For New Families, New Lives, Des Moines Sunday Register, Oct. 10, 1993, at 1A.

These children are special-needs children. Their chances of adoption may be less than fifty percent and the chances of this sibling unit remaining intact are probably practically zero.

This family has been able to function with preservation services. In 1990, the family was offered family preservation services from June 25 to July 19. Norm Ostbloom, a Family Preservation Therapist with Lutheran Social Services, was assigned to the family. At the conclusion of his assignment, he filed a report, which is a State's exhibit. The report set out here provides a window

view of the family's attitudes, struggle, and need for continued services to care for the children. The report provided:

This family was assigned for Family Preservation service 6/25/90 with a history of abuse and neglect reports, many of which have been substantiated. At a review hearing scheduled for July 25, placement of the children is anticipated if the family's situation is not improved at that time.

At the time of the referral Willie was away from home. I found Tammy to be quite suspicious of service providers and resistive to participating in another service. When Willie returned home June 29, he indicated a willingness to participate in the service and encouraged Tammy to also do so. We agreed to focus on parenting issues, such as management of the children's behaviors, and concrete issues including furnishings for the house, doctors' and lawyers' appointments, etc.

Willie secured an automobile and took responsibility for securing household furnishings. He has obtained new bunkbeds, drapes for the living room, and a television. The family still needs a crib for Daniel, but Willie and Tammy are confident that they will find one at a reasonable price soon. I provided caps for the electrical outlets and a plug for the cord of a fan, and LSS also provided a second fan in good operating condition. The landlord has been making minor improvements on the house to bring it up to code standards. The residence is large and most adequate, and the parents have maintained good condition of order and cleanliness during my work with them.

The family does not have a telephone, and I assisted them in making appointments with their Legal Aid and Juvenile Court-appointed attorneys as well as Daniel's and Tammy's physicians. V. Loren Cohen, D.O., saw Daniel July 6 & 13 and states both in person and in writing that he is developing appropriately. I also assisted Tammy in completing her Title XIX application.

I have used Home-based Nurturing Program materials in the educational component of my work with Tammy and Willie. They have responded with

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interest and have read and discussed the written material to a moderate degree. They have found their schedule too busy for them to make use of the videotapes at this time but indicate that they may be interested in using them at home when they secure a VCR. The Nurturing Program is appropriate for continued use with this family at a pace that is suitable to them.

I have found Willie a source of strength and stability, and his presence most likely helps Tammy to avoid conditions of crisis that have developed at times in the past. During the duration of my work with this family, there have been no apparent incidents of abuse or neglect. I have found Tammy and Willie highly motivated to provide an adequate home for the children, and they have done so quite well in the past four weeks.

Tammy and, to a lesser degree, Willie are suspicious and distrustful of the motives of service providers. They believe that they can care adequately for the children without intervention. CPT Worker Suzanne Stewart suggested that service from the MR/DD Unit at Lutheran Social Service might be appropriate, and Patty Theisen-Schulte, supervisor of that unit, explained the program to Tammy and Willie at their home on July 18. They responded that they would accept casework from MR/DD and may want to use respite care at some time in the future. They would prefer for this to be the sole service that they are required to accept and desire to work toward complete separation from the service system.

In summary, during four weeks of intensive work with this family, I have found Tammy and Willie to function adequately as a couple and as parents. Their affection for each other and for the children is obvious. Service from the MR/DD Unit at LSS would likely be adequate to help them maintain this level of functioning. I recommend that the conditions upon which the family would be discharged from court supervision be clearly delineated. In the event that major stress conditions, such as Tammy becoming sole caretaker, develop in the future as has happened in the past, the level of support and supervision may need to be intensified. (Emphasis supplied).

Tammy's attorney suggests:

The state and the service providers should not expect perfection from an imperfect situation. The fact that Tammy is of low income and low intellectual functioning does not mean that she should not be guided in such a way that the children and she can live safely together as a family. The fact that the case was previously considered successful and closed is evidence of this. The best interests of these children dictate that they be able to live together as brothers and sisters with their natural mother.

There is merit to this argument.

I am careful not to use stereotypes of mentally handicapped persons in assessing the mother's abilities. See Note, Retarded Persons in Neglect Proceeding: The Erroneous Assumption of Parental Inadequacy 31 Stan. L. Rev. 785, 786 (1979). I agree that Tammy's performance as a parent must be measured in light of what would be expected of a parent in her circumstances. See In re B.D.S., 431 A.2d 203, 207 (Pa. 1981). I am concerned about splitting the siblings.

The State's brief sets forth no plan for the children's futures after termination. The only reference in the State's brief to the children's future is a statement, "They (the children) deserve stable homes." The State advances no specifics as to how this will be accomplished. These will be hard to place children and it will be difficult to find adoptive homes and nearly impossible to find an adoptive home where the six children can be together.

The guardian ad litem too has not addressed the issue of the children's futures after termination of their parents' parental rights. The only reference to the children's future in the guardian ad litem's brief is, "These children clearly need therapeutic care, stimulation, and stability. Terminations of Appellants' parental rights is in the best interest of these children." The guardian ad litem provides no evidence of why termination will provide therapeutic care, stimulation, and stability.

The report of Norm Ostbloom indicates with extensive and continuous services the family unit could be preserved. I would remand for a hearing to consider evidence of what plans the state has made for the children's future after termination.

If the state can offer stable adoptive homes, then termination may be in the children's best interest.

If termination only means the children will spend their childhood separated from their parents and siblings in various foster homes, then the children's best interest may be served by returning them to their mother who loves them and offering services such as were provided by Norm Ostbloom to assist this mother in keeping her family intact.

The mother is limited in caring for her children by her limited intelligence. But she clearly loves her children and has been very devoted to them. Severing the children from their mother's love and devotion will be

traumatic to the children. Should we sever these children from their mother's love where there has been no evidence advanced as to the future they may have in state care? I think not.