FILED
NOV 29 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-492 / 93-693

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IN THE INTEREST OF T.C., Jr., T.C., D.C., and C.C.,
Minor Children,

C.H., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

Mother appeals an order terminating her parental rights, contending the State was premature in seeking termination and failed to offer her services. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

James L. Ottesen, Davenport, guardian ad litem/attorney for minor children.

Heard by Schlegel, P.J., Hayden, J., and McCartney, S.J.* Donielson, J., takes no part.

*Senior judge from the 2nd judicial district serving on this court by order of the Iowa Supreme Court.

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HAYDEN, J.

The mother, Charlene, appeals the termination of her parental rights to her natural children: Tyrone, Jr., born November 19, 1987; Tychika, born October 3, 1988; Dorshay, born March 30, 1990; and Charleston, born March 19, 1991. Charlene was born on April 28, 1973. The parental rights of the children's father, Tyrone, Sr., were terminated in March 1993. He is not involved in this appeal.

This family came to the attention of the Iowa Department of Human Services (DHS) in March 1991. Charleston tested positive for drug use upon his birth. Charlene admitted to a social worker she had used cocaine on the weekend before his birth. A founded child abuse report was issued. The report, however, was based on a denial of critical care of the three older children as they were not current on their immunizations. Charlene was named as the perpetrator. The family was referred for services. At the time there were also outstanding warrants for Charlene's arrest based on two counts of prostitution and one count of fifth-degree theft.

On April 23, 1991, Charlene left Charleston with his maternal aunt while she went out to have a few beers. She did not return for more than twenty-four hours. She had left no money or formula for Charleston's care. The aunt no longer wanted to care for Charleston and called DHS. While DHS was obtaining a removal order, Charlene retrieved Charleston from the aunt's home and left. A founded child

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abuse report was issued as to Charleston. The report was based on a denial of critical care due to improper food and supervision.

On April 26, 1991, a child in need of assistance (CINA) petition was filed regarding Charleston. In May 1991 Charleston was turned over to DHS by Charleston's paternal uncle. The uncle knew there was a removal order outstanding; he was concerned because the child was sick and Charlene refused to seek medical care for fear the child would be taken from her. Charleston was placed in emergency foster care. A CINA petition involving Charlene's other three children was filed on June 26, 1991.

On July 9, 1991, an adjudicatory hearing was held with regard to Charleston. The court found Charlene was content to allow her extended family to raise her children, Charlene visited her children but did not affirmatively parent them, and Charlene failed to comply with court orders and to participate in services offered by DHS. The court ordered Charleston remain in foster care.

On August 1, 1991, an adjudicatory hearing was held with regard to Tyrone, Tychika, and Dorshay. The court adjudicated the children in need of assistance. The children were placed with their paternal grandmother. On August 20 a combined dispositional hearing was held. Charleston was placed with his paternal great uncle, and the other three children remained in the placement of their paternal grandmother, subject to DHS supervision. Charlene

was granted supervised visitation only. Within a few days of the hearing Charlene admitted to her pretrial release person she had been using cocaine for one year, three times per week. She admitted relying on illegal activities to fund her drug dependency. In September 1991 Charlene failed to attend two scheduled appointments for a substance abuse evaluation.

In December 1991 Charlene reported the three older children were not receiving proper care under the custody of their paternal grandmother. She revealed to DHS she had been clandestinely living in the same home with the children since May 1991. Charlene reported drugs were being used in the residence and the children were fed whatever remained after the adults had eaten. The children were removed from the home on December 20, 1991. On that same day, Charlene was arrested on two counts of prostitution and was incarcerated for one week. On December 27, 1991, she was arrested for theft.

In February 1992 Charlene completed a substance abuse evaluation. On February 5, however, she did not attend a scheduled appointment to begin outpatient treatment. When Charlene missed the rescheduled appointment for outpatient treatment, the recommendation for treatment was changed to an inpatient program. She completed inpatient treatment on June 16, 1992. Charlene, however, refused to accept the recommendation she enter a halfway house. On July 10, 1992, she reported to her Bethany Home case worker she was again using drugs.

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In late November 1992 Charlene was arrested for prostitution, theft in the fourth degree, and two charges of failure to appear. She was sentenced to 120 days in jail.

On January 21, 1993, a petition for termination of parental rights was filed. A hearing on the petition was set for March 4, 1993. Charlene moved to continue the hearing because she expected to be released from jail in mid-March. The hearing was rescheduled for March 23. On March 18 Charlene again moved to continue the hearing because she had been convicted on a new criminal charge and sentencing was scheduled for March 24. The motion was denied, and hearing was held on March 23.

In a written order filed on March 24, 1993, the court noted when this case began Charlene was unable to care for her children due to her substance abuse and her legal difficulties. The court found "two years later nothing has changed." The court ordered termination of Charlene's parental rights under Iowa Code sections 232.116(1)(c), (1)(e) (Tyrone and Tychika), and (1)(g) (Dorshay and Charleston) and 232.117.

Charlene now appeals. She contends the State has made no more than minimal efforts to support visitation between herself and her children, has made no effort to reunify the family, and has been premature in seeking the termination of her parental rights.

Our scope of review in parental termination proceedings is de novo. In re J.K., 495 N.W.2d 108, 110 (Iowa 1993) (citation omitted); Iowa R. App. P. 4. Our primary concern is the best interests of the child. In re J.K., 495 N.W.2d at 110. Those best interests include the child's long-range as well as immediate interests. Id. We look to what the future likely holds for the children if returned to their parents. Id. The parent's past performance is the best evidence for this determination because past performance is indicative of the quality of future care the child may receive. Id. (citing In re M.M., 483 N.W.2d 812, 814 (Iowa 1992)). We affirm the juvenile court's termination order.

Charlene's continuing criminal behavior and lack of commitment to her children does not make the return of the children possible. Her criminal history has included incarcerations for theft and prostitution. Charlene has admitted she participated in these criminal activities in order to obtain money for drugs. Charlene was incarcerated for at least a week in December 1991 and again from March 19, 1992, to April 23, 1992. At the time of the termination hearing, March 1993, Charlene was incarcerated for a period of 120 days. Upon her release from jail in April 1992 scheduled visits had resumed. Charlene, however, failed to attend the first scheduled visit and failed to call to confirm the second scheduled visit. Charlene has established a pattern of leaving the children

with relatives for long periods of time and failing to care and provide for them herself. Her actions and attitude show a failure to mature and assume responsibility for herself and her four children.

DHS has been involved in this case since March 1991. During that time Charlene has been unable to establish housing or employment. She had only one job for a period of three days before she was fired. Charlene has refused to inform DHS of her whereabouts, has failed to attend numerous visits with her children, has failed to attend scheduled appointments with social workers regarding the case plan, has failed to follow through with various treatments and recommendations for her chemical dependency addiction, and has failed to attend about one-half of the court appearances related to her children. Her chemical dependency addiction also remains unresolved. Despite the services offered to Charlene, she has been unable to help herself in order that she may begin providing basic necessities for her children.

II. DHS must make reasonable efforts to reunite the family and provide services. Iowa Code § 232.102(5)(1991).

In May 1991 DHS identified the problem areas of this case: Charlene was chemically dependent, she engaged in prostitution, she had been unable to provide a home and living necessities for her children or herself, and she showed little concern or interest in the children.

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The case plan developed by DHS called for Charlene to complete substance abuse evaluation and treatment, refrain from illegal activities, obtain a "documentable" income and housing, and maintain contact with her children.

The record shows Charlene has been unable to cure any of the problem areas identified in the case plan. Services have been offered to deal with her chemical dependency addiction. Visitations to maintain contact with her children and appointments with social workers to discuss the case plan have been scheduled; however, Charlene failed to attend many of them.

Services were also offered to the children and their caretakers during the past two years. Bethany Home assumed responsibility for this case on August 21, 1991. For five and one-half weeks family preservation services were offered to the paternal grandmother. Bethany Home also provided services to Charleston and his great uncle.

The Iowa Supreme Court has stated: "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 489, 495 (Iowa 1990) (emphasis added). Children should not be made to await the their mother's maturity. In re D.W., 385 N.W.2d 570, 578 (Iowa 1986) (quoting In re Kester, 228 N.W.2d 107, 110-11 (Iowa 1975)); see In re B.K.K., 500 N.W.2d 54, 57 (Iowa 1993). DHS has provided Charlene with services and given her time to address her chemical

dependency addiction, develop the ability to provide basic necessities and shelter for her children, and alleviate the instability in the children's lives. Clear and convincing evidence supports the termination of Charlene's parental rights to all four children. The best interests of Tyrone, Tychika, Dorshay, and Charleston are promoted by the termination of Charlene's parental rights. We affirm the juvenile court's termination order.

III. Charlene argues the State should be held to a higher standard of proof because of the court relied upon documents admitted in previous CINA adjudications. Iowa Code section 232.96(6) allows for the admission of "[a] report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital" in an adjudication hearing "notwithstanding any objection to hearsay statement contained in it . . . ." Iowa Code § 232.96(6) (1991). In an adjudication hearing the State has the burden of proving the allegations and statements in such documents by clear and convincing evidence. Iowa Code § 232.96(2) (1991). The same standard applies in a termination hearing. Iowa Code § 232.117(2) (1991). The Iowa Code provides for the admission of such evidence in termination hearings under a clear and convincing standard. We reject Charlene's argument a stricter burden of proof is necessary.

Costs of this appeal are taxed to Charlene.

AFFIRMED.