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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF D.J.K.,)
A Child,)
D.K., Mother,) 9-42 / 88-1272
Appellant.

Appeal from the Iowa District (Juvenile) Court for Muscatine County (2461), James A. Weaver, District Associate Judge.

D.K., mother of D.J.K., a child age 4, appeals from termination of her parental rights. **AFFIRMED.**

Neva Retting Baker and Ronald D. Arispe of Muscatine Legal Services, Muscatine, for appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Valencia Voyd McCown, Assistant Attorney General, for appellee State.

William F. Creasey of Goedken & Creasey, Muscatine, for the appellee child.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

D.K., mother of D.J.K., and his father were married at the time of his birth in May 1984. In 1985 the father abandoned D.K. and D.J.K. The father abused alcohol and physically abused D.K. and his whereabouts are unknown. The father's rights were terminated on the grounds of abandonment. He has not appealed.

In terminating D.K.'s parental rights, the juvenile court found D.J.K. had been adjudged a child in need of assistance and his custody had been transferred to the Iowa Department of Human Services (D.H.S.) pursuant to section 232.102 for at least twelve of the last eighteen months. The juvenile court also determined the child could not be returned to D.K. without suffering the adjudicatory harms defined in Iowa Code sections 232.6(c)(2) and (g). The juvenile court also concluded there was clear and convincing evidence D.K. consented to termination of her parental rights for good cause and good cause had not been shown for a revocation of her consent. D.K. appeals. We affirm.

The mother (D.K.) suffers from mental illness. She is a paranoid schizophrenic. Her illness causes periods of psychosis, alternating with periods of apparent remission. D.K.'s illness can be controlled to some extent by medication, but she has a poor history of taking the medication. She frequently suffers from feelings of

depression, low energy level, and lethargy. This lethargy has been so severe she has failed to maintain minimal home sanitation or personal hygiene. In addition, during one period of active mental illness, she determined refrigeration was bad. She fed her children spoiled food until they became ill, and she then refused to obtain proper medical care for them.

D.J.K. lived with his mother until July 1986, when he was two years old. At that time he and his older sister were placed in emergency foster care when the mother's mental illness flared up. Both children were adjudicated to be children in need of assistance in October 1986. In December 1986 the children were returned to the mother's home on a trial basis. However, the mother proved unable to care for both children, and in January 1987 D.J.K. was once again placed in foster care. He has remained in foster care continuously since then. The older sister remained with the mother for several months but has since been returned to foster care. She is not involved in the present litigation.

In June 1987, D.K. signed a voluntary consent to the termination of her parental rights with respect to D.J.K. The State filed a termination petition. Prior to a hearing the mother stated she withdrew her consent to termination. The State amended its petition and alleged additional grounds.

D.K., the mother, contends Iowa Code section 232.116(1)(e) as applied to her, is unconstitutional and void on its face as it is overly broad and vague. She claims the juvenile court erred in holding she could revoke her consent only upon a showing of good cause as defined in Iowa Code section 600A.4(4) and for finding there was no clear and convincing evidence she had good cause to revoke her consent to terminate her parental rights. Lastly, she challenges the juvenile court's finding there was clear and convincing evidence to support the termination of her parental rights.

In reviewing termination proceedings, we are guided by certain well settled principles:

> Appellate review of the proceedings to terminate a parent child relationship is de novo; thus "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings.
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> Central to a determination of this nature are the best interests of the child. In this connection we look to the child's long range as well as immediate interest. Hence, we consider what the future likely 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 that parent is capable of providing.

In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). It has also been recognized our statutory termination provisions are

preventative as well as remedial. They are designed "to prevent probable harm to a child and do not require delay until after harm has occurred." In re A.M.S., 419 N.W.2d 723, 726 (Iowa 1988).

I.

First we address D.K.'s contention Iowa Code section 232.116(1)(e) (1989) as applied to her is unconstitutional.

Iowa Code section 232.116(1)(e) (1989) provides the court may order parental rights be terminated if it finds that all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
>
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and
>
> (3) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

We set out the relevant portions of Iowa Code section 232.102(4) as follows:

> 4. Whenever possible the court should permit the child to remain at home with the child's parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:
>
> a. The child cannot be protected from physical abuse without transfer of custody; or
>
> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

We also set forth the relevant portions of Iowa Code section 232.2:

> 6. **"Child in need of assistance"** means an unmarried child:
>
> * * *
>
> c. Who has suffered or is imminently likely to suffer harmful effects as a result of:
>
> * * *
>
> (2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.
>
> * * *
>
> g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

When viewed and read together, we determine the above statutory provisions are sufficiently clear to inform parents what is expected of them. Section 232.116(1)(e) sets out in clear and unambiguous language when and in what instances termination of parental rights may be sought. That section also specifies the minimum amount of time a parent must be allowed before termination may occur. Section 232.2(6)(c)(2) and (g) clearly shows the harms which justifies an adjudication of a child in need of assistance.

The mother's primary concern is that section 232.116(1)(e) is unconstitutionally vague for failing to provide notice of steps or actions required to regain

custody of her child and to defeat the termination action once the termination petition is filed. If a statute is vague on its face, the insufficiency may be cured if the record shows evidence of actual notice. In the Interest of Ponx, 276 N.W.2d 425, 531-32 (Iowa 1979). The record here shows the mother had actual notice of what was expected of her for return of her child. When the termination petition was filed in October 1987, those expectations had not been met nor had any of the circumstances leading to the child's adjudication been alleviated.

In this case the mother was provided with intensive services and educational efforts by five care providers. Between October 1986 and July 1987, the mother received hundreds of hours of services to improve her parenting, to protect her children, and to facilitate the return of D.J.K. to her custody. By her own testimony, she was fully advised of the areas in which her parenting was deficient and dangerous. D.K. acknowledged she was fully advised of improvements which must be made before she could hope to regain custody of D.J.K. Our supreme court has held that a long and detailed history of juvenile court proceedings can afford a parent with ample information of what is expected of them. In the Interest of M.H., 367 N.W.2d 275, 280 citing Long v. Long, 255 N.W.2d 140, 144 (Iowa 1977). This is particularly applicable in the instant case where the mother had previously considered voluntarily relinquishing

parental rights. In that instance, services and advice were provided to her and it was sufficiently explained to her what she must do to maintain custody of D.J.K.

Even if section 232.116(1)(e) was vague, D.K., the mother, had actual notice of its requirements. "In discussing whether another termination statute was constitutionally applied, the court has said, 'Briefly stated, the ordinary parent should encounter no difficulty in "getting the message" clearly conveyed by (the statute).' " Id. Here D.K. was adequately informed of what was required of her and what she must do to not have her parental rights terminated. We affirm the juvenile court on this issue.

II.

We next take up D.K.'s claim there was not clear and convincing evidence to support termination of her parental rights. Specifically, D.K. asserts the State has failed to prove by clear and convincing evidence D.J.K. would suffer harm warranting an adjudication of D.J.K. as a child in need of assistance if he was returned to her. Upon our de novo review, it is necessary to recite some of the facts in addressing this issue.

D.J.K. first came to the attention of the Iowa Department of Human Services (DHS) in the summer of 1986. D.J.K. was two years old at the time. His father had left the family home in 1985 and has not been heard from since.

The mother (D.K.) had fed her children spoiled food. As a result, the children became sick. D.K. did not seek medical treatment or care for them. The children, D.J.K. and his older sister, had been ill for several days with vomiting, diarrhea and high fever. The reason given by D.K. why she gave the spoiled food to her children was food did not need refrigeration. She had given her children this unrefrigerated food for two or three weeks. On July 19, 1986, the children were placed in foster care by an ex parte order. On July 21, 1986, D.K. voluntarily admitted herself to the Mental Health Institute in Mt. Pleasant. She was later committed for treatment when she expressed an intent to leave. She was discharged on October 10, 1986, after several successful home visits. Following a hearing on July 31, 1986, custody of the children were given to D.H.S.

The mother has been diagnosed as a chronic paranoid schizophrenic. Because of her mental illness she had been hospitalized seven times between 1977 and July 1986. D.K. requires medication for her mental illness. She has a poor history of taking her medicine. Each time during hospitalization, D.K. would commence with medication and continue for about a month before discontinuing it. When she quit taking her medicine, she experienced irrational behavior and thought patterns. She became verbally and physically abusive to D.J.K.'s older sister. D.J.K.

witnessed this abusive and injurious treatment. His sister related her mother was very unpredictable and was afraid of her.

In October 1986 the children were adjudged children in need of assistance. D.J.K. has continued in that status throughout the hearings in this case. In November 1986 a dispositional order was entered which provided for a gradual return to D.K.'s custody. It was recognized then D.K. would have to continue with therapy and medication for the children not to suffer harm.

In December 1986 the children were returned to D.K. Services provided to the family included family therapy, homemaker assistance, individual therapy for D.K. through the community mental health center, and parenting information. These services have been provided since D.K.'s discharge from the hospital.

Less than three weeks after the children returned home, D.K. exhibited physical manifestations of her mental illness. Principally she was depressed and lethargic and unable to properly parent her children, particularly D.J.K. She had given the children only popcorn to eat on January 11, 1987, and on January 12, 1987, D.J.K. had only saltine crackers to eat. In attempting to care for her children, D.K. suffered great stress. D.K. was unwilling to use her prescribed medication. Without the medication she would have serious difficulty caring for D.J.K. She

recognized this but she continued her refusal to take the prescribed medication. D.J.K. was returned to foster care in January 1987 where he has remained.

Dr. Wilcox testified D.K. had been "pretty sick" in the past and was uncertain about having the children come home until he knew how D.K. would be able to handle the children. He pointed out the stress children placed on her and noted she had been doing psychologically better since the stress of her children was removed.

Dr. Marchman indicates D.K. is still suffering from mental illness with no great indication of change. He doubted D.K. would ever have the ability to provide a stable home environment for her children and carry out her parental responsibilities. This opinion was based on his examination of D.K. and a review of her mental history. D.K.'s past indicates she has had recurring episodes of severe illness during which she was not capable of managing her own affairs or taking care of her children properly. Based on a ten-year history, Dr. Marchman expected D.K. would have additional periods of time where she would become disorganized in her thoughts and behavior and neglectful of her children.

We recite Dr. Marchman's opinion on D.K. and find it appropriate:

> I believe at this time at least it would be inappropriate to place small children in her exclusive custody or long-term care. I believe she lacks the emotional strength to deal with the stresses associated with child care on a daily

> basis. I also think there is a high risk of recurrence of psychotic episode and she is unlikely to be insightful enough to recognize the deterioration of her mental state, if and when it should occur; as a result, I believe that any children who might be in her care at such time would be at some significant risk.

Proof by clear and convincing evidence of any one of the types of harm described in Iowa Code section 232.2(6) at the time of the hearing is sufficient to support termination. In re A.M.S., 419 N.W.2d at 725 (citation omitted). The State has the duty to assure that every child within its borders receives proper care and treatment, and must intercede when parents fail to provide it. Our current statutory termination provisions are preventative as well as remedial. Child custody should be quickly fixed and little disturbed. Children should not be made to suffer indefinitely in parentless limbo. In re A.C., 415 N.W.2d at 613 (citations omitted).

We hold there is clear and convincing evidence in this record to support the juvenile court's determination D.J.K. could not be returned to his mother, D.K., without suffering the harms defined in Iowa Code section 232.2(6), (c)(2), and (g).

Because of our determination in this division, it is not necessary for us to consider D.K.'s challenges to the juvenile court's rulings regarding her consent and attempt to revoke her consent.

AFFIRMED.

Schlegel, P.J., concurs; Sackett, J., specially concurs.

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I concur with the majority because I think the mother voluntarily, knowledgeably, and without pressure consented to the termination of her parental rights.