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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF M.L.O. and A.O., Children,	)	Filed July 30, 1987
D.O. and **E.O.**, Parents,	)	7-130 86-1076
Appellants.	)	

Appeal from the Iowa District Court for Linn County Juvenile Court (Nos. JT 599 and JT 600), Robert E. Sosalla, Associate District Judge.

The parents of two children have appealed from the juvenile court order terminating their parental rights. **AFFIRMED.**

Gerald J. Kucera of Bennett, Kucera & Taylor, Cedar Rapids, for appellant mother.

Leslie E. Stokke of Crilley & Stokke, Cedar Rapids, for appellant father.

Brad J. Brady of Crawford, Sullivan, Read & Roemerman, Cedar Rapids, for appellee children.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Robert Kimm, Assistant County Attorney, for appellee State.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

The parents of two young children have appealed from the juvenile court order terminating their parental rights. On appeal, both parents challenge the sufficiency of the evidence to prove that the children had been outside their custody for the required period or that the children could not be returned to their custody. In addition, the mother contends termination of her parental rights should have been avoided because her inadequate parenting was caused by a disease (alcoholism). The father contends he was not given adequate notice of the conduct expected of him in order to avoid termination. We affirm.

The children in question are a girl, A.O., born in December 1980 and a boy, M.L.O., born in September 1982. D.O. is the natural mother of the children, and E.O. is the putative father. D.O. and E.O. have been married twice to each other and were separated at the time of trial. In 1982, M.L.O. was adjudicated a child in need of assistance upon D.O. admitting the allegations of the State's petition were true and correct. In 1984, A.O. was stipulated by the parties to be a child in need of assistance. Both children were placed in foster care.

The evidence in this case indicates D.O. has had a longstanding and serious problem with drug and alcohol abuse. D.O. has been hospitalized numerous times for drug and alcohol treatment, attempted suicide, psychiatric care, and injuries due to violent episodes between her and E.O. The exhibits in this case are numerous. Over the past five years, the medical reports concerning D.O. repeatedly mention D.O.'s psychiatric problems which include depression and alcoholism. The case progress reports also make up a large part of this case. While at times progress has been shown, there are many indications of D.O.'s inability to be an effective parent through her failure to obtain regular employment, her lack at times of having a permanent residence, her failure to follow through with a schooling program, her lack of cooperation with social workers,

commenced July 7, 1985. The progress reports progressively got worse, until December 1985 when D.O. attempted suicide with alcohol and drugs. In January 1986 D.O. admitted herself to the hospital for alcohol treatment. Because D.O. left the children with a family whose own daughter had been removed from the home, the social worker removed the children. D.O. then checked herself out of the hospital without completing treatment, separated from E.O., moved in with a man, and terminated her therapy.

Trial commenced in this case in May 1986. Testimony was elicited from a social worker, child psychologist, day care director, foster parents, and family therapists as to the need to terminate D.O.'s parental rights to protect the children from future harm. The trial concluded in June, at which time D.O. and E.O. stipulated to the termination of their parental rights as to both A.O. and M.L.O.

In June 1986 the juvenile court terminated the parental rights of both parents upon the State's petition. The juvenile court relied on the ground for termination stated in Iowa Code section 232.116(5) (1985). That statute permits termination if the juvenile court finds:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
> b. 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
> c. 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.

The juvenile court further based its decision on the basis of both parents' testimony that the allegations of the petition were true and correct and that a termination of the parental rights was in the best interests of the children.

Both parents have appealed from the termination order.

her trouble in maintaining sobriety, her failure to supply adequate supervision of the children, and her inability at times to maintain a healthy and sanitary lifestyle for the children. Trial home placements and overnight visits were tried in between foster care placement of the children.

In February of 1985, the juvenile court noted M.L.O., who was two years old, had been out of the home most of the time since birth and that A.O. had been out of the home for nine months. At this time the court cautioned D.O. to make some progress in her parenting situation or termination of parental rights would be looked to.

In June 1985 a review hearing was held. The court noted that D.O.:

> . . . has had five different lawyers representing her in this case, nine social workers from the Department of Human Services, and at least eighteen different agencies, including this Court, working with her, said agencies including Public Health Nursing; the FAST Team of Lutheran Social Services; Community Mental Health-Dr. Penningroth; Sedlacek Center at Mercy Hospital; Area Substance Abuse Council; Dr. Lynn Noble, psychologist; Dr. Block of the Child Development and Clinic; Grant Wood Area Education Agency; Pastor Hires of the Calvin-Sinclair Presbyterian Church of Cedar Rapids; Family Service Agency; HACAP, Hawkeye Area Community Action Program; General Assistance; Four Oaks; Department of Human Services; University of Iowa Hospitals and Clinics; Alcoholics Anonymous; and Voc Rehab.
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> D.O. has had her opportunities to learn how to raise these children. She has had her opportunities to learn how to straighten out her life. However, the agencies and social workers and the lawyers and judge cannot live her life for her. She must do this by herself and not just become a professional agency seeker.
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> * * *
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> The time has come for D.O. to either provide for these children in a careful, loving, stable, proper manner, or this Court, the County Attorney, D.O. and the child's attorney and all the agencies must recognize that D.O. has failed. No longer can these children be bounced from foster home to D.O. and back to foster care and to D.O.'s, foster care to visitations and from foster home to foster home. These children need stability. D.O. will be given a last opportunity.

The court once again ordered a trial home placement of the children which

The parents challenge the sufficiency of the evidence to prove that the children cannot be returned to their custody. They also challenge the sufficiency of the evidence to prove that the children had been transferred from their parents for placement for twelve of the last eighteen months; the parents assert that the children lived with the mother on a trial placement basis for seven months of the eighteen-month period preceding the termination petition.

In addition, the father contends that termination was erroneous as applied to him because social workers had neither included him in plans to reunite the family nor informed him of the conduct expected of him to avoid termination.

Finally, the mother contends that termination of her parental rights should have been avoided under Iowa Code section 232.116(6)(e). That statute provides as follows:

> Notwithstanding the provisions of subsections 2 to 5 the court need not terminate the relationship between parents and child if the court finds:
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> * * *
>
> e. That the absence of a parent is due to the parent's admission or commitment to any institution, hospital or health facility or due to active service in the state or federal armed forces.

She argues that the statute should apply to her and entitle her to avoid termination because her inadequate parenting resulted from the disease of alcoholism.

The appellee State argues that the parents have waived their arguments because they both testified at the termination hearing that termination would be in the children's best interests and that they would withdraw their objections to termination.

On appeal, we review parent-child terminations de novo. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Central to a determination

of this nature are the best interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Intrinsic to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight may be gleaned as to future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981).

Under Iowa Code section 232.116(1) (1985), parental rights may be terminated when a parent voluntarily and intelligently consents to the termination of those rights and for good cause desires the termination. Under Iowa Code section 232.116(5) (1985), parental rights may be terminated if the court finds that (1) the child has been adjudicated a child in need of assistance; (2) the custody of the child has been transferred from his parents for placement 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 his parents because the child cannot be protected from physical harm or harm which would justify the adjudication of the child as a child in need of assistance.

The transcript of testimony of the third and final date of trial, June 9, 1986, provides overwhelming evidence to sustain a determination that the parental rights of both D.O. and E.O. should be terminated. D.O. testified that her children had been out of her home for at least twelve of the past eighteen months, that there is clear and convincing evidence that would indicate that her children cannot be returned to her, and that her children had previously been determined to be children in need of assistance. D.O. testified for thirty pages without interruption about her decision in this regard. She expressed her voluntariness, stated she had a clear mind as to what she was doing, and stated she was aware of the permanent nature of such a termination.

E.O. also testified on June 9, 1986, that his wishes were the same as D.O.'s with regard to a voluntary termination of his parental rights and that he under-

stood what he was doing. He also admitted to not having seen the children for the past year. Because of the voluntary nature of both D.O. and E.O.'s termination of parental rights, the State did not cross-examine D.O. or E.O., nor was any more evidence elicited.

Because D.O. and E.O. both voluntarily and intelligently consented to the termination of parental rights and there is good cause for such termination based on the foregoing facts stated at the outset, all pursuant to Iowa Code section 232.116(1) (1985), the determination of the trial court to terminate D.O.'s and E.O.'s parental rights over A.O. and M.L.O. is affirmed.

Furthermore, in support of said termination, the elements of Iowa Code section 232.116(5) (1985) have also been met through both the voluntary admission of D.O. and E.O. and the bulk of the evidence presented. Both M.L.O. and A.O. were stipulated early on to be children in need of assistance. Legal custody of M.L.O. was transferred to the Department of Human Services on February 23, 1983, and legal custody of A.O. was transferred on August 23, 1984, both through dispositional orders. Legal custody was not returned to D.O. In addition, physical custody of the children with D.O. occurred during the last trial home placement, which commenced in July 1985 and continued to January 1986 when D.O. admitted herself to the hospital for treatment. Prior and subsequent to that period of time, the children were under foster care. Therefore, custody of the children was transferred for twelve of the last eighteen months. There was clear and convincing evidence that the children could not be returned to D.O. and E.O. D.O. and E.O. have consistently proven that they are incapable of providing long-term, stable care for the children.

We briefly address appellant D.O.'s argument that her drinking problem was equivalent to commitment in an institution or health facility under Iowa Code section 232.116(6)(e) (1985). We note that D.O. had a serious problem

with alcoholism. However, the periods of time in health facilities for such treatment were sporadic, at times uncompleted, and were not the crux of her unavailability to be an effective parent.

We also briefly address appellant E.O.'s argument that he was not included in any plans for reunification of the family unit. The record in this case reveals that E O. maintained no contact with the children for the last year, and he never contacted any of the social workers or foster homes to demonstrate his concern for custody of the children. It is evident from the trial transcript that E O felt that M.L.O. and A.O. were the mother's children to do with as she pleases Therefore, to now assert he had no opportunity to be included in any services to correct the parent-child relationship is without merit.

Therefore, based on the foregoing discussion, the trial court's decision terminating the parental rights of D.O. and E.O. over A.O. and M.L.O. is affirmed.

AFFIRMED.