

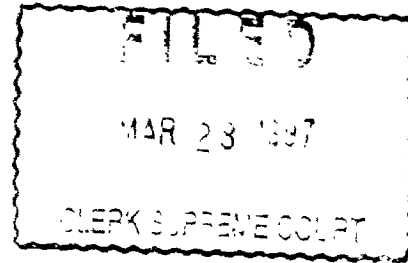
IN THE COURT OF APPEALS OF IOWA

No. 6-748 / 96-0961

IN THE INTEREST OF D.W., C.S., T.P.,
and A.M.W., Minor Children,

T.W., Mother,
Appellant,

E.P., Father of T.P. and A.M.W.,
Appellant.



Appeal from the Iowa District Court for Greene County, Stephen E. Barbour,
Associate Juvenile Judge.

Mother and father appeal from the juvenile court order terminating their
parental rights. **AFFIRMED.**

R. Patrick Eich of Eich Law Firm, P.C., Carroll, for appellant-mother.

Mark J. Rasmussen of Horak & Rasmussen Law Offices, Jefferson, for
appellant-father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, Chris Odell and Maureen McGuire, Assistant Attorney Generals, and Nicola
J. Martino, County Attorney, for appellee-State.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopt, Hoyt &
Copeland, Jefferson, guardian ad litem for minor children.

Heard by Habhab, C.J., and Huitink and Vogel, JJ.

HABHAB, C.J.

Tieka is the mother of four children: Donovan, born March 3, 1985; Cody, born April 25, 1991; Tyler, born May 8, 1992; and April, born April 27, 1994. Eric is the biological father of Tyler and April. Tieka and Eric were never married but lived together in Jefferson, Iowa, from August 1991 to April 1994. Donovan suffers from encopresis and requires special care. He has behavioral problems which are related to his home environment. Cody also has behavioral problems. Tyler was diagnosed for failure to thrive.

On March 5, 1992, Donovan was adjudicated a child in need of assistance (CINA) largely due to lack of appropriate medical attention and care. Services were offered and he remained in Tieka's custody. In May 1992, Donovan was placed in foster care after Eric failed to adequately care for him while Tieka was hospitalized. Donovan was subsequently returned home and counseling and in-home services commenced.

In May and July 1993, further reports of denial of care were founded mainly due to the failure of both Tieka and Eric to adequately supervise the children. In mid-1993, they began resisting services. After another founded report as a result of their continued failure to supervise and provide adequate care for the children, Cody and Tyler were each adjudicated to be a CINA on March 25, 1994. Cody, Tyler, and Donovan were placed in foster care.

Shortly before April's birth, Tieka and Eric separated. Immediately thereafter, Eric began living with Deb Zimmerle in Jefferson. Eric and Deb then relocated to Atlantic, Iowa. Deb has two children and she was receiving in-home counseling and other services from the Department. Apparently, Eric also participated in those services. They were married on December 2, 1995.

On May 17, 1994, April was adjudicated to be a CINA and has remained in foster care since June 1994. In February 1995, the court ordered a contract of expectations for Tieka, but in July 1995, Tieka left town with a carnival and services ceased.

After a hearing, the court terminated parental rights to all four children pursuant to Iowa Code sections 232.116(1)(c) and (d), to Donovan and Cody pursuant to section 232.116(1)(e), and to Tyler and April pursuant to section 232.116(1)(g). The court concluded neither Tieka nor Eric had made any significant progress in parenting the children on a full-time basis. The court also concluded termination was in the children's best interest.

Tieka and Eric appeal.

I. Scope of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for

termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

We consider what the future 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Clear and Convincing Evidence. Eric and Tieka assert there was not clear and convincing evidence presented to the juvenile court to warrant termination of their parental rights. We disagree and affirm the decision of the juvenile court.

At the termination hearing in November 1995 and in March 1996, the court admitted numerous exhibits presented by the guardian ad litem consisting of all the Department reports and evaluations completed throughout the history of the case.

The record is replete with founded child abuse reports against Tieka and/or Eric. These reports reflect a consistent failure to adequately supervise and provide adequate medical care for the children. Tieka and Eric have repeatedly resisted services, and they have been inconsistent in their efforts to keep appointments and with following through with the requests and expectations of the Department. The

abuse the children have suffered has resulted in their extreme uncleanliness, neglect, and injury.

At trial numerous witnesses testified, including a clinical psychologist who evaluated Eric. She determined Eric has a low IQ and has difficulties with concentration and attention. She explained Eric focuses on his own needs and isolates himself. She believed he was a passive problem solver and was overwhelmed by parenting. At best, there has been only minimal change in Eric's skill level with regard to his ability to meet the children's needs. He becomes easily frustrated with the children and is unable to independently parent them. The record reflects he shares no bond with either Tyler or April. If any improvement in his parenting skills is made, it would be extremely slow in coming. While Eric may do better when given enough time to visually perceive what is required of him, he will always need constant training, supervision, and reinforcement.

Tieka's therapist diagnosed her as having a borderline personality disorder. She explained Tieka denied having any problems with parenting and was a poor candidate for therapy. She concluded it was unlikely Tieka would develop adequate parenting skills.

In terminating the appellants' parental rights, the juvenile court concluded despite having received a wide variety of services and evaluations, Eric and Tieka "possess woefully inadequate parenting skills, and neither have the capability of acquiring satisfactory skills."

The therapist for Donovan and Cody opined they need permanency and their return to Tieka's custody would be detrimental to the progress they had made while in foster care. Department personnel also discussed the services offered to the parents, their lack of effort and noncompliance with those services, and their demands for the Department to transfer services when they had relocated. Both Eric and Tieka have a history of minimizing their situation and to place blame on others, including the children.

We find there is clear and convincing evidence in the record to support termination of both Eric and Tieka's parental rights. The record establishes the children cannot be returned to either of them at this time. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)).

These children need a safe, stable home and a nurturing environment which the appellants have been unable to provide in the past and show no ability to provide in the future. They have had more than ample time to make the necessary changes in

their lives to assume the care of the children but have failed to do so. Clear and convincing evidence within the record establishes that none of the children can be returned to the care of Eric or Tieka. We affirm the juvenile court's decision and find the best interests of the children mandate the termination of their parental rights.

III. Services Provided by the Department. Reasonable services must be provided in an attempt to preserve the family unity before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Both Tieka and Eric argue the Department failed to make reasonable efforts to return the children to their care.

Our review of the record reveals a plethora of services have been provided to Eric and Tieka -- in-home family counseling, homemaker services, C&Y Clinic, public health monitoring. Throughout their receipt of services, they consistently failed to keep appointments and failed to follow through with recommendations and expectations of services providers. Eric did not respond well to services as he refused to discuss parenting, the children, or his relationship with Tieka. The court specifically addressed Eric's complaint that he had not received services after moving from the Jefferson area, and concluded he had to make "some sort of affirmative effort and [could] not just sit back and pass on blame" to the Department. It noted the Department recommended he participate in follow-up services but informed Eric he had to seek out the services in Atlantic.

Tieka's lifestyle contributed to her difficulty benefiting from services. The worker conducted visits with Tieka in eight or nine separate locations. The record reveals both Eric and Tieka at best made minimal improvements after their receipt of services.

In our de novo review of the record, we find both Eric and Tieka have received services necessary to meet their individual needs. We reject their argument the Department failed to provide reasonable services for reunification.

IV. Miscellaneous. Tieka argues the juvenile court erred in admitting certain exhibits submitted by the guardian ad litem. These exhibits consisted of numerous reports relating to the children from the CINA proceedings. Tieka maintains this evidence is inadmissible hearsay. After thorough review of the exhibits and the record, we find no error on the part of the juvenile court in admitting these exhibits into evidence.

Eric contends the juvenile court erred in denying his motion for an independent evaluation. In denying Eric's request, the juvenile court concluded, "After the completion of testimony in this matter, it is clear that no further evaluation is needed. The court can make its decision on this case without further input." In reviewing the juvenile court's decision, we find the juvenile court did not err in denying Eric's request for an independent evaluation.

AFFIRMED.