

FILED

JAN 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF M.E.F.)
and C.S.F., Minor Children,)
R.F., Natural Father,)
Appellant.)

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8-724
88-1521

Appeal from the Iowa District (Juvenile) Court for
Mahaska County (J6-274), Gene W. Glenn, Juvenile Referee.

The father of two girls appeals from the termination of
his parental rights. **AFFIRMED.**

Randy S. DeGeest, Oskaloosa, for appellant father.

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

Greg A. Life, Oskaloosa, guardian ad litem, for the
child

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

HAYDEN, J.

R.F., the father of M.E.F. and C.S.F., appeals from the juvenile referee's order terminating his parental rights. The father, who is presently incarcerated for sexually abusing one of the children, contends his parental rights should not be terminated until he has been released from prison and has been given a chance to rehabilitate himself. We affirm.

On September 26, 1986, M.E.F., 10 years old, and C.S.F., 8 years old, were adjudicated children in need of assistance as defined in Iowa Code section 232.2(6)(c)(2). In addition, M.E.F. was adjudicated a child in need of assistance as defined in section 232.2(6)(d). They were placed in the legal custody of the Iowa Department of Human Services for foster care placement. Both children have been in foster care placements since that time.

The children came to the attention of the Iowa Department of Human Services pursuant to a report of alleged sexual abuse of M.E.F. by her father. After investigation by a protective treatment worker of the Department, it was substantiated that M.E.F. had been sexually abused by her father.

In its adjudication order, the court found over a period of time M.E.F. had been touched improperly by her father between her legs and the father had engaged in vaginal intercourse with her. The court also found M.E.F.

had told her mother about her father's conduct and the mother did nothing. At that time, the mother was employed evenings from 3 p.m. until 11 p.m. and was leaving the children alone with the father. Approximately two months before the adjudication, the father told the mother he had engaged in sexual intercourse with M.E.F. Following this admission, the father and mother obtained counseling at the Southern Iowa Mental Health Center and disclosed to a psychiatric social worker their situation. The social worker reported it to the Department, who initiated a child protection investigation. Although the mother was informed of the father's conduct with M.E.F., for approximately two months she continued to leave the child alone with the father when she worked.

The court further found in an examination of M.E.F. by Dr. Rizwan Shaw, Dr. Shaw established there had been sexual intercourse with the child over a long period of time from the absence of the hymen and because of vaginal scarring. On September 9, 1986, at the Mahaska County Sheriff's Office, the father admitted to only one act of sexual intercourse with the child. The court ordered the father have no contact with the girls, the girls receive individual counseling, and the parents undergo psychiatric evaluations.

Testimony given by the caseworker indicated although the court ordered the father undergo a psychiatric

evaluation, he only partially completed the evaluation before he left the state. He was later found in Hutchinson, Kansas; arrested and returned to Iowa. He pleaded guilty to sexual abuse in the third degree and received a sentence up to ten years in the state adult correctional system.

The caseworker testified at the termination hearing since the children's adjudication it has been discovered C.S.F. was also abused by her father. According to her testimony, C.S.F. admitted to her she had been sexually abused by her father. This abuse began when she was approximately three years old and continued until she was removed from the parental home at the age of eight.

Appellate review of proceedings to terminate a parent-child relationship is de novo. In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). We review the facts as well as the law and adjudicate the parents' rights anew. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). However, weight is to be accorded the findings of the juvenile court, especially when considering the credibility of the witnesses. Id.

Central to a determination of this nature are the best interests of the child. Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977). We look to the child's long-range as well as immediate interests. Hence we consider what the future likely holds for the child if returned to his or her

parents. Dameron, 306 N.W.2d at 745. Insight for this determination can be gained from evidence of the parent's past performance because that performance may be indicative of the quality of future care that parent is capable of providing. Id.

Although this court recognizes a parental interest in the integrity of the family unit, this interest is not absolute but may be forfeited by certain parental conduct. In Interest of Wall, 295 N.W.2d 455, 457 (Iowa 1980). The State has the duty as parents patriae to assure that every child within its borders receives proper care and treatment and the State must intercede when parents abdicate that responsibility. Dameron, 306 N.W.2d at 745.

The termination statutes are preventative as well as remedial. Id. The provisions mandate action to prevent probable harm to a child and do not require delay until after harm has occurred. Id.

The father's rights were terminated by the juvenile referee under the authority of Iowa Code section 232.116(5) (1987). We note that code section has been amended and replaced by Iowa Code section 232.116(1)(e). This amendment provides the court may terminate a parent's rights with respect to a child when all of the following are found to have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(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.

(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.

Iowa Code § 232.116(1)(e) (Supp. 1987).

The father does not challenge or contest the fact the evidence established all of the elements for termination. He acknowledges the facts in this case stack up against him and the uncontroverted facts are overwhelmingly against him. He claims the findings of the juvenile court do not allow him to rehabilitate himself nor to even attempt to rehabilitate himself with regard to his children. He asks for a chance to rehabilitate himself and demonstrate it to the court after his release from prison.

We refer to the relevant portions of the juvenile court's findings and order as follows:

17. That the children cannot be returned to the custody of either the father or the mother or both of them and be protected from the following dangers and harms:

a. Sexual abuse by the father.

b. Harmful effects as a result of the mother's prospective failure to protect the children from sexual abuse by the father or other possible perpetrator.

c. Harmful effects to the children as a result of both parent's prospective failure to properly supervise them.

d. Harmful effects to the children as a consequence of the emotional abuse that they would suffer from their prospective or actual return to the custody of either or both parents.

18. That the children cannot be returned to the custody of their parents, or either of them, as provided in Section 232.102 of the Code.

19. That the best interests of the children, [M.E.F.] and [C.S.F.], the within children, would be served by the termination of the parent-child relationship existing between them and their parents, [R.F.] and [D.F.], and by the children's subsequent adoption in order that they may have permanency, protection, love, stability and guidance through the remainder of their minority years.

IT IS THEREFORE ORDERED by the Court pursuant to Section 232.116(5) of the 1987 Code of Iowa that the Petition for Termination of Parental Rights filed in this cause be and it is hereby granted and that the parent-child relationship previously existing between [M.E.F.] and [C.S.F.], the within children, and [R.F.] and [D.F.], as parents, be and the same is hereby terminated.

We do not recite the evidence in the record, in detail, but only acknowledge it is clear and convincing in support of the court's findings. We adopt the trial court's findings, as to the appellant father, as our own.

Many efforts have been made available for appellant to improve and help himself to no avail. M.E.F. and C.S.F., ages 12 and 10 respectively, cannot be expected to await until adulthood or beyond for the father to become rehabilitated. They must be afforded an opportunity to get on with their lives. Children should not be made to suffer indefinitely in parentless limbo. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987).

AFFIRMED.