FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF P.S.C. and J.J.C., Children,	)	Filed August 27, 1986
Appellees,	)	31
and	)	6-191 / 85-1035
K.S.C.W., Mother.		

Appeal from Scott County Juvenile Court (No. J 4081-1082) - John Nahra, Juvenile Court Judge.

The natural mother of two children appeals the juvenile court's order terminating her parental rights. **AFFIRMED.**

Bobbi M. Alpers, Eldridge, Iowa, and Catherine Alexander, Davenport, Iowa, for parent-appellant.

Thomas J. Miller, Attorney General of Iowa, Charles K. Phillips, Assistant Attorney General, and Elaine C. Kopf, Assistant Scott County Attorney, for State-appellee.

John P. Harris of Gomez, May, Harris & McKennick, Davenport, Iowa, for children-appellee.

Considered by Oxberger, C.J., Snell and Hayden.

HAYDEN, J. 32

The natural mother of two children, P.S.C., born March 1, 1978 and, J.J.C., born August 9, 1980, appeals from the juvenile court's order terminating her parental rights pursuant to Iowa Code section 232.116(5). She claims 1) there was not sufficient evidence to terminate; 2) the juvenile court erred in refusing to deny termination pursuant to Iowa Code section 232.116(6)(e) (1983); 3) the juvenile court erred in refusing to consider long-term foster care; and, 4) that the juvenile court improperly balanced the best interests of the State of Iowa against the children's welfare. We affirm.

The juvenile court was presented the following factual background and scenario: While the children were in the care of their natural mother, K.S.C.W., they suffered cigarette burns, diaper rash, played with razors and were not fed properly. Their home was filthy, had no running water, and was poorly heated.

Since foster care the children's reaction to visits with K.S.C.W. have been bizarre. The girl, P.S.C., after such visits has, among other things, scratched herself all over her body, urinated on the floor and stopped eating. After one visit she stood in the middle of the room grunting like an animal and at other times she become pale and disoriented. The boy, J.J.C., openly hates the visits with K.S.C.W. and the social workers who take him on the visits. During the visits he pushes his mother away and refuses to talk to her and wants to leave.

K.S.C.W. has suffered severe mental health problems. One mental health professional stated that she is like a small child, and is immature, egocentric, and unable to deal with problems. Another described her as schizophrenic and mentally incompetent to parent her children. Yet another stated that she is impulsive, disorganized, emotionally labile and inconsistent. Her problems are of a life-long nature and will require treatment indefinitely. She has been

hospitalized innumerable times. She cannot remember her parenting lessons from one week to the next.

K.S.C.W.'s relationships with family and friends are disjointed and chaotic. According to social workers, her relationship with her seven-year-old daughter involves a reversal of roles. She runs to the child with her problems and constantly seeks the child's praise and approval. The child feels responsible for her mother's care and is disturbed because of this. K.S.C.W.'s relationship with her son also has problems. She favors her daughter so profoundly that she often forgets the boy's birthday, and frequently brings the daughter presents, while bringing the son nothing. There are other problem relationships. K.S.C.W. apparently treats her second husband as a father figure. She is extremely dependent on social workers, sometimes calling them as often as seven times a day.

K.S.C.W.'s married life has been wildly tempestuous and marred by violence, innumerable separations, and constant arguing. She married and divorced her first husband twice. Her second husband once filed for divorce and retracted the petition on the same day. He repeatedly kicked her out of the home. They would repeatedly fight and make up. She would get in brawls with his grown children.

She and her first husband took a cross-country hitchhiking trip while the children were still infants. Her 49-year-old second husband divorced her saying he was going to marry her 14-year-old niece. Throughout her life she has relied on a non-relative, Uncle L., for support. Uncle L. died when he climbed out on the roof of her speeding car one day. She had threatened to kill him with rat poison earlier in the day.

The evidence further shows that during the last five years K.S.C.W. has been offered parenting classes, nurse visits, homemaker visits, marital counseling, and a variety of help and assistance. She has shown no improvement in parenting

skill. The children have been out of the home for more than four years, not just one year.

The general rules controlling our review are not in dispute and are well settled:

> Several previously enunciated principles have served to guide our examination of the record before us. Appellate review of proceeds 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 that 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 interests. Hence, we necessarily 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 Interests of W.G, 349 N.W.2d 487, 491-492 (Iowa 1984) (citing In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981)).

I

K.S.C.W. argues that termination is not warranted in this case and contends that the Department of Human Services hindered rather than helped her with her children, that the children would not suffer harm if they were returned to her and that these children need permanency and stability which could be best found with her.

We find the evidence is clear that the Department of Human Services and others have devoted much time and effort into the family of K.S.C.W. in an effort to reunite the family and not break it up. Her own testimony in referring to

the social agencies and workers' efforts was, "I think they really tried to give me a chance at this. I really do."

We determine here that under Iowa Code sections 232.116(5) and 232.102(3)(b) (1983), it was shown by clear and convincing evidence that P.S.C. and J.J.C., if returned home, could not be protected from harm that would justify adjudication of children in need of assistance. K.S.C.W. loves her children, however, her limitations prevent her from being able to effectively parent these children. We realize that alone, these are not sufficient reasons to terminate a parent-child relationship. See In the Interest of Wardle, 207 N.W.2d 554, 563 (Iowa 1973) and In the Interest of McDonald, 201 N.W.2d 447 (Iowa 1972). However, the record of this case supports the termination by clear and convincing evidence.

We agree with K.S.C.W. that these children need permanency and stability but disagree that she is best positioned to provide this. The presumption that the best interests of a child is to be in the custody of its parent or parents is a rebuttable presumption. In the Interest of T.D.C., 336 N.W.2d 738, 740 (Iowa 1983). K.S.C.W. because of her own unstable life is unable to provide stability and permanency for her children. The evidence in this record sadly, but clearly, rebuts the presumption favoring K.S.C.W.

II

K.S.C.W. alleges that termination of her parental rights under Iowa Code section 232.116(6)(e) (1983),[1] was inappropriate for the reason that the

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[1] 232.116(6). Not withstanding the provisions of subsection two to five, the Court need not terminate the relationship between parents and child if the Court finds:

* * *

(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.

grounds for a termination require volitional acts by a parent and that a chronically mentally ill parent is unable to commit those volitional acts. This is not an accurate analysis of the law.

The Supreme Court has upheld or ordered termination in several cases where the grounds for termination arose from the parent's lack of parenting skills due to borderline intellectual functioning or chronic schizophrenia. See In Interest of C. and K., 322 N.W. 2d 76 (Iowa 1982); In Interest of Voeltz, 271 N.W.2d 219 (Iowa 1978); and In Interest of Wardle, 207 N.W.2d 554 (Iowa 1973). The focus of the Court's decision is not whether the parents have committed some volitional act or acts which should be punished by termination of their rights. Instead the Court's inquiry is into what is in the children's best interests and specifically, whether the children can safely return home. The decision reached by the trial court in this case is amply supported by the record evidence.

III

K.S.C.W. urges that long term foster care should have been utilized instead of termination of her parental rights. The controlling factor here is the best interest of the children. The Iowa Supreme Court has consistently decided cases against long-term foster care. The court must choose between the parentless limbo of long-term foster care in a situation where there is little, if any, hope that natural parent would ever be able to parent the child or the prospect for adoption of the child thereby giving stability and permanency to the child.

Here all witnesses, except K.S.C.W.'s mother, testified that she is not presently capable of parenting and never will be. After five years of help and assistance from various agencies and persons K.S.C.W. has shown no improvement in parenting ability or skill. The children had not been in the parental home

for four years prior to trial. We quote from two Iowa Supreme Court cases that emphasizes and summarizes our decision here as follows:

> "If it can be imagined or even hoped that (the mother) might one day develop enough rudimentary skills to function adequately there is no way this could be done in time for these children. The precious and crucially important days of childhood move inexorably. Nature allows no continuances. We have said many times that children cannot wait to grow up."

In Interest of C. and K., 322 N.W. 2d 76, 81 (Iowa 1982).

> "We are not content to allow the children to remain indefinitely in foster care to await their mother's unlikely recovery. We have rejected similar suggestions in the past. ... We appear to be dealing with an inadequate person and we must state the facts as we find them. (The children) cannot continue in their parentless limbo. Child custody should be quickly fixed and little disturbed."

In Interest of Voeltz, 271 N.W. 2d 719, 724 (Iowa 1978).

IV

The issue of whether balancing the best interest of the State against the children's welfare, or the State's purported concern of the economics and cost of long-term foster care, may be contrary to the best interest of the children was never discussed, made reference to, or testified about and is raised for the first time on this appeal.

In equity matters, such as this, where our review is de novo it is our responsibility to review the facts as well as the law and adjudicate rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the course of the trial court's proceedings. In Re McDonald, 201 N.W.2d 447, 453 (Iowa 1972). Error, if any, has not been preserved on this issue for our decision. However, if it was properly before us we would hold that it has no merit when viewed and considered in light of the facts of this case. It

is clear to us that the agencies and persons involved with K.S.C.W. and the children walked that extra mile for K.S.C.W.

AFFIRMED.