IN THE COURT OF APPEALS OF IOWA

No. 7-118 / 96-2039

IN THE INTEREST OF A.Y., M.Y., D.Y., D.Y., and C.Y., Minor Children,

B.Y., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

Mother appeals from the juvenile court order terminating her parental rights.

AFFIRMED.

Kevin E. Hobbs, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Chris Odell, Assistant Attorney General, John Sarcone, County Attorney, and Jaki Lyn Livingston, Assistant County Attorney, for appellee-State.

Shobhana Kasturi of the Youth Law Center, Des Moines, for minor children.

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

HUITINK, J.

B.Y. appeals from the juvenile court order terminating her parental rights to her five children. We affirm.

B.Y. is the mother of C.Y., a daughter age fifteen, A.Y., a daughter age thirteen, M.Y., a daughter age twelve, D.Y., a daughter age eleven, and D.Y., a son age ten.

In December 1993, all five children were adjudicated children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) (physical abuse and neglect), 232.2(6)(c)(2) (failure to supervise), 232.2(6)(n) (parental substance abuse), and 232.2(6)(o) (child's drug exposure). The children were removed from B.Y.'s home and placed with her sister. In March 1994, at the request of the Department of Human Services (DHS), the court removed the children from the sister's home because of suspected drug activity in the home and her refusal to cooperate with services. In April 1994, the court adopted a case permanency plan and ordered B.Y. to enter a substance abuse treatment program and to submit to discretionary drug testing by DHS.

The children were returned to B.Y.'s custody in September 1994. However, after B.Y. tested positive for cocaine, the children were removed in October 1994. In December 1994, B.Y.'s four daughters were temporarily placed with their maternal

grandmother. In April 1995, the grandmother consented to the temporary removal of the children.

In October 1996, the juvenile court terminated the parental rights of B.Y., the putative father to C.Y., and D.W., the father of the remaining four children, pursuant to Iowa Code section 232.116(1)(b)[1] and (1)(e)[2] (1995). Neither father has appealed.

B.Y. appeals the termination order asserting that the best interests of the children require reunification with their mother. She also argues the State has failed to make reasonable efforts to reunite her family.

I. Standard of Review.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. v. Tauke,* 469 U.S. 1222 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

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[1] The court finds there is clear and convincing evidence that the child has been abandoned or deserted.

[2] The court finds that all of the following have occurred:

(1) The child is four years of age or older.

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

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

II. Best Interests of the Children.

B.Y. argues the termination of her parental rights was not in the best interests of the children. She asserts the court should have given more consideration to the biological relationship between her and her family. B.Y. contends even though the statutory grounds for termination may be present, the best interests of the children override that determination.

The primary concern in termination proceedings is the best interests of the child. Iowa R. App. P.14(f)(15); *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981):

> We look to the child's long-range, as well as immediate interests. 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 preventive as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App 1988) (citing *Dameron*, 306 N.W.2d at 745).

We find the juvenile court correctly determined termination of T.H.'s parental rights was in the best interests of the children. The record reveals a tragic history of abuse and neglect, and a variety of emotional and mental problems related to B.Y.'s drug addiction. All five children have experienced placements in various youth homes, treatment centers, and foster homes. Several of the children have expressed

opposition to returning to live with their mother. Even more troubling are the children's reports of the mother's drug use in their presence and related violence.

The oldest child, C.Y., has sickle cell anemia, displays aggressive and depressive traits, and is the subject of four child abuse reports. She has informed caseworkers she does not want to be returned to her mother's care.

A.Y. suffers from depression, anxiety, post-traumatic stress disorder, and oppositional defiant disorder. She has reported neglect and physical abuse while in her mother's care, including drug-related violence.

M.Y. has been diagnosed with post-traumatic stress disorder, oppositional defiant disorder, depression, and suicidal tendencies. She has acted out violently at school and in treatments centers. M.Y. informed caseworkers her mother used crack cocaine. She has also reported her mother hit the children with switches, belts, and extension cords.

D.Y. was placed at Orchard Place in December 1995 as a result of her aggressive behaviors toward herself and others. She has been described as having the "potential to seriously injure others" and remains in restrictive placement requiring intensive treatment. D.Y. has also indicated she does not want to be returned to her mother's care.

The youngest child, D.Y., suffers from major depressive disorder, post-traumatic stress disorder, and attention deficit hyperactive disorder. He has displayed

extreme aggression and homicidal and suicidal tendencies. D.Y. has been placed in the highest structured foster care program available and receives individual therapy. He too is opposed to returning to live with his mother because of the past physical abuse.

B.Y. admits drug dependency but denies any relationship between her addiction and the children's circumstances. B.Y. also denies using drugs in the presence of her children or any violence. The record clearly indicates B.Y. does not recognize and is incapable of and providing for the children's needs.

We reject B.Y.'s assertion the court should have given more weight to the biological relationship between her and her children. Under these facts, preservation of the parent relationship would not serve the best interests of these children. Furthermore, we find no merit in B.Y.'s argument that permanent adoptive placement of the children will be difficult. A finding that a child is adoptable is not a prerequisite to termination of parental rights. *In the Interest of T.C.,* 522 N.W.2d 106, 109 (Iowa App. 1994). There is overwhelming evidence of physical and emotional abuse of these children while in their mother's care. The children's immediate need for permanency and a stable and secure home far outweighs any considerations of adoptability or the mother's biological ties to the family. Accordingly, we find the termination of B.Y.'s parental rights was in the best interests of the children and we affirm the juvenile court's decision.

III. Reasonable Efforts.

B.Y. argues DHS labeled her a "hopeless addict" and scorned any effort to reunify her family.

The State is required to make reasonable efforts to reunite the parent and child prior to termination. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa App. 1993). In proceedings to terminate parental rights, the reasonableness of services the State has offered in an effort to preserve the family should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

There is no support for B.Y.'s contentions. Since February 1989, B.Y. has been offered many services and treatment programs, many which she failed to successfully complete. These services include local drug treatment programs, family preservation services from Lutheran Social Services, in-home family counseling, and parenting classes at the YMCA.

B.Y. does not specify why the services received were inadequate or what additional services she should have received. B.Y. had an obligation to request alternative or expanded services prior to the termination hearing if such assistance would be beneficial. *In the Interest of B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In the Interest of L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

We also note the mother has submitted eleven urine samples between March 1995 and February 1996 with eight positive results. She concedes her drug use

prevented visitation with her children because these visits required negative drug tests. The failure of the parents to comply with DHS's case plan cannot be an independent ground to terminate parental rights. *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989). However, we may, and do, consider it as evidence of B.Y.'s attitude toward addressing the problems that necessitated removal in the first instance. *Id.*

B.Y. claims she will need another six months before she can provide the children with a drug-free home. We will not require the children to await B.Y.'s commitment to rehabilitation and parenting. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983) (children must not be made to await their parent's maturity).

We reject B.Y.'s arguments asserting the State failed to make reasonable efforts to reunite her with her children and find instead that she chose not to affirmatively respond to the services offered. We affirm the juvenile court's order terminating her parental rights.

AFFIRMED.