



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF

J.S., Minor Child,

P.S., Natural Mother,

Appellant.

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Filed November 30, 1987

7-316
87-226

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Appeal from the Iowa District Court for Dubuque County (No. J103090),
Charles H. Jacobs, Juvenile Court Referee.

The natural mother appeals from the order of a juvenile court referee
which terminated her parental rights pursuant to Iowa Code section 232.116(5).

AFFIRMED.

Matthew J. Devlin of Norman, Gilloon & Wright, Dubuque, for the natural
mother-appellant.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney
General; and Jean Becker, Assistant County Attorney, for the State.

Chadwyn D. Cox of Reynolds & Kenline, Dubuque, for the child.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

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The natural mother appeals from the order of a juvenile court referee which terminated her parental rights pursuant to Iowa Code section 232.116(5). The mother contends: (1) the referee erred in granting the State's motion for mental examination of the mother; and (2) the referee erred in finding that grounds for termination had been proved by clear and convincing evidence. We affirm.

The appellant, P.S., is the natural mother of J.S., born February 20, 1984. Later in 1984, P.S. was diagnosed as having chronic undifferentiated schizophrenia. After her release from hospitalization, she was taught parenting skills and received homemaker services. On May 28, 1985, a Department of Human Services (DHS) investigator found P.S. had failed to wash or feed J.S., and there was spoiled food and maggots in the kitchen. J.S. was found to be a child in need of assistance on June 27, 1985. The mother's parental rights were terminated on January 16, 1987. J.S. was never returned to P.S.

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 parent's 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). The State has a duty to see that every child receives minimally adequate care and treatment and will intercede when parents abdicate their responsibility. Interest of Dameron, 306 N.W.2d at 745. To justify termination of parental rights, the court must

find by clear and convincing evidence proof of the statutory grounds. Iowa Code § 232.117(2) (1985).

We initially note that not only may the court look at the past behavior of the parent, but that it is an important factor. In the Interest of M.H., 367 N.W.2d 275 (Iowa App. 1985). We look to the child's long-range and immediate interests and consider what the future could hold for the child if returned to the parent. Id. We may obtain insight for this determination 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. Interest of Dameron, 306 N.W.2d at 745; Interest of M.H., 367 N.W.2d at 278. Also, the current statutory termination provisions are preventative as well as remedial and, therefore, mandate action to prevent probable harm to a child and do not require delay until after harm has occurred. In the Interest of N.H., 383 N.W.2d 570, 572 (Iowa 1986); Interest of Dameron, 306 N.W.2d at 745.

The mother claims that the referee erred in granting the State's motion for a mental examination of the mother. She states that there is a provision authorizing the mental examination of a parent in CHINA proceedings, but no similar statutory authorization in termination proceedings. She asserts the court would have to use Iowa Rule of Civil Procedure 132 to order a mental examination which requires a finding of good cause. She argues there was no finding of good cause in the present case.

The State maintains that this view is inconsistent with recent Iowa Supreme Court holdings delineating the relationship between CHINA and termination proceedings, and, specifically, relies on language in In Interest of Adkins, 298 N.W.2d 273, 277 (Iowa 1980), that "CHINA and termination proceedings are not separate and distinct actions, but are interdependent and woven. The CHINA action may be a prelude or first step to termination of the parent-child relation-

ship." In addition, we find that evidence properly admissible in an adjudicatory proceeding should be accorded the same standard of admissibility in a subsequent hearing or termination pertaining to the same child. In the Interest of E.J.R., 400 N.W.2d 531, 532 (Iowa 1987) (hearsay rules applicable in CHINA cases are applicable in termination cases). The standards and rules applicable to terminations under one chapter should not differ from the provisions leading to the same result in another chapter. See In re Chad, 318 N.W.2d 213, 218 (Iowa 1982).

The State submits that a termination court has the same power as a CHINA court to order a mental health examination. We agree. The two proceedings are so interrelated that we believe it was the legislature's intent that the provision in a CHINA proceeding granting a mental health examination transfers to a termination hearing. To allow a mental health examination in a hearing to decide where to temporarily place the child but not in a termination hearing where parental rights are permanently severed is illogical. Evidence of mental health is very relevant in termination proceedings in determining what is in the child's best interests. See e.g., State ex rel. Leas In Interest of O'Neal, 303 N.W.2d 414 (Iowa 1981); In Interest of Hoppe, 289 N.W.2d 613 (Iowa 1980).

Petitioner concedes that J.S. was adjudicated a child in need of assistance. Iowa Code § 232.98(2) (1985), states that following an adjudication that a child is a child in need of assistance, the court may order a mental examination of the parent if that person's ability to care for the child is at issue. Petitioner has an eighth-grade education; she has been hospitalized for schizophrenia for which she now takes drugs to control. Her ability to care for J.S. is at issue.

The mental evaluation of P.S. was to include: (1) psychiatric analysis of the severity of the mother's existing mental health problem; (2) the extent to which her existing mental health problem prohibits her from caring for her

child; (3) the extent of any learning disabilities of the mother; (3) the extent of any learning and developmental disabilities or delays present in the child; and (4) if possible, an analysis of whether the termination of parental rights would impose upon the child significant emotional damage. We also find these reasons comport to the "good cause" requirement of Iowa Rule of Civil Procedure 132, which P.S. urges is controlling in this matter.

We find both our statutory and case law support the juvenile referee's granting the State's motion for the mental health examination of the mother.

Parental rights were terminated in this case under Iowa Code section 232.116(5). Elements to prove under that section include: (1) the child has been adjudicated a child in need of assistance; (2) custody of the child has been transferred for twelve of the last eighteen months; and (3) there is clear and convincing evidence that the child cannot be returned to the parents as provided in section 232.102 (to protect the child from physical abuse or to protect the child from harm justifying the child being adjudicated a child in need of assistance). P.S. claims the referee erred by finding that grounds for termination had been proved by clear and convincing evidence. She contends the State failed to prove that reasonable efforts had been made to eliminate the need for removal; specifically, that the DHS never attempted overnight visitation or considered the support P.S. received from her sister. The State argues that more than adequate efforts were made toward keeping J.S. in the home.

The record reveals that P.S. received all the services possible in order to be an effective and responsible parent to J.S. Visitations were encouraged. Testimony reveals that a return home or overnight visit with P.S. would not be advisable since P.S.'s visits required supervision. It is not a requirement that J.S. be returned to P.S. to prove P.S. cannot serve as a parent. P.S.'s conduct is sufficient to demonstrate such a placement would not be successful. See

In re D.W., 385 N.W.2d 570, 574 (Iowa 1986). We agree with the trial court that maximum effort was given by service providers to preserve the relationship between P.S. and J.S.

P.S. also argues the State failed to prove that the child cannot be returned to the mother without harm to the child resulting from her lack of supervision and that there was no evidence J.S. had suffered or was likely to suffer harmful effects because the mother did not adequately and appropriately display affection.

We find there was abundant evidence to show J.S. could not be returned to P.S. Although mental disability alone is not enough to terminate a parent-child relationship, it is a contributing factor to the inability to perform the duties of a parent. Interest of O'Neal, 303 N.W.2d at 422. J.S.'s welfare requires termination of parental rights. There have been three reports of child abuse filed. J.S. has been found playing with a razor, pulling himself onto a hot oven door, and covered with urine and feces. The home has been found to be without electricity with spoiled food found in the refrigerator, as well as maggots. J.S. was not fed adequately, nor clothed adequately. P.S.'s home had a screen door which needed repair, through which J.S. could fall. During visits, P.S. did not interact with J.S. on an affectionate level. P.S. has had trouble directing and guiding J.S. in common everyday circumstances. P.S. needs constant supervision by someone telling her how to respond to J.S.; i.e., how to wash J.S., what to feed him and how to interact with him. A psychiatrist testified at the termination hearing that P.S. has a schizophrenic illness, symptoms of which include delusions, hallucinations, thinking disorders, excitement, or apathy. A psychologist testified that under stress, P.S.'s thinking may deteriorate; he also did not believe "that any of the services that we would have provided would make a significant difference in her parenting ability." In addition to P.S., the psychologist observed J.S. and felt P.S. was not capable of providing "the

minimally adequate environment for J.S.'s development." Numerous social workers testified about P.S.'s inability to properly take care of J.S. on her own even though they felt P.S. is an interested and concerned mother. P.S. has been provided extensive parenting services, but is unable to apply those skills she is taught due, in part, to her own emotional and intellectual limitations.

We find that clear and convincing evidence *has been shown to terminate* the parental rights of P.S. and affirm the trial court in all respects.

AFFIRMED.