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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-115 / 89-1809

IN THE INTEREST OF T.C., A Child;

B.J.C., Mother,

Appellant.

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Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge.

The mother of a child appeals the termination of her parental rights. **AFFIRMED.**

Ben C. Chatman of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Mary K. Wickman, Assistant Attorney General; for appellee.

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

SCHLEGEL, J.

The mother in this termination proceeding challenges the order of the juvenile court terminating her parental rights. We affirm.

The child in question is a girl born in August 1983. Her parents were never married to each other, and her father has had no role in her life. The child lived with her mother until she was four years old.

In February 1988, when the child was four years old, she was removed from her mother's home on an emergency basis after a medical examination showed conclusive evidence of sexual abuse. Suspicion focused initially on the mother's live-in boyfriend; however, the child has consistently reported that both the mother and the boyfriend engaged in repeated sexual abuse. The child has also reported that the mother and the boyfriend struck her and tied her to a bed with ropes.

Following the emergency removal in February 1988, the child was adjudicated CHINA and was formally placed in foster care. She has been in foster care continuously since February 1988.

The mother has consistently refused to admit any participation in the sexual abuse of the child. She has also been reluctant to acknowledge that her boyfriend might have been involved or that sexual abuse occurred at all. She was initially referred to Polk County's Intra-Family

Sexual Abuse Program (IFSAP), but she was not eligible to participate in that program because she would not admit any involvement in sexual abuse. After the IFSAP program declined to accept her, she was offered alternative counseling. She and her boyfriend attended counseling sessions fairly regularly for several months, but she continued to deny any culpability and to question whether sexual abuse had even occurred. There was testimony that the mother's refusal to admit any involvement in sexual abuse had limited the services available to her.

In July 1989, the State filed a petition to terminate the parental rights of both natural parents. After a hearing, the juvenile court did terminate the parental rights of both natural parents. With respect to the natural father, the court relied on the ground of abandonment. With respect to the mother, the court relied on Iowa Code section 232.116(1)(e); that statute permits termination if a child has been adjudicated CHINA, has been in foster care for twelve of the last eighteen months, and cannot safely be returned to the parent's care. The court did not specifically rely on sexual abuse as a ground for termination.

The mother has appealed the termination order. The natural father has not appealed.

The mother contends the termination should be invalidated because the Iowa Department of Human Services

did not follow its statutory mandate to "make every effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(6). She appears to argue that the termination is premature because the State has not had an opportunity to provide her with services, due to the fact she is ineligible for many services because she will not accept guilt for the sexual abuse.

The mother also contends the juvenile court erred by relying in large part on a finding that the mother has made no progress on "issues of abuse." She argues that those issues are ambiguous, especially where the State allegedly failed to prove that the mother bore any responsibility for the abuse.

Finally, the mother contends that termination under section 232.116(1)(e) is unconstitutional as applied to these facts. She notes that one of the prerequisites for termination under section 232.116(1)(e) is a finding that the child has been in foster care for twelve of the last eighteen months. She argues that in a case involving a sexual abuse treatment program, more than twelve months will almost always pass before treatment is completed and social workers believe a child may safely be returned to the parent's home. Under these circumstances, she argues, the State may obtain a termination under section 232.116(1)(e) in almost every case involving sexual abuse

treatment, without having to prove that sexual abuse actually occurred or that the parent was responsible for said abuse. She argues that this situation renders termination under section 232.116(1)(e) unconstitutionally vague, as applied to these facts, because too much discretion is delegated to the Iowa Department of Human Services or to the administrator of a sexual abuse treatment program.

The State responds, among other things, that the mother's constitutional argument was not preserved for appellate review.

Our review of proceedings to terminate a parent-child relationship is de novo. In Interest of R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). We accord weight to the fact findings of the trial court, especially when considering the credibility of the witnesses that the court has heard and observed first hand, but we are not bound by them. Id. Our primary concern is the best interests of the child; although a child's best interest standing alone does not constitute sufficient grounds for termination of parental rights. Id.

We must first consider whether the issue regarding the constitutionality of section 232.116(1)(e) has been preserved for appeal. As a general rule, de novo review encompasses only those issues properly presented, which have been raised; and error, if any, preserved in course of

trial. McCalester v. Hillcrest Services to Children and Youth, 232 N.W.2d 1, 3 (Iowa 1975). The appellant has raised her constitutional issue for the first time on appeal. Because this issue was not raised in the trial court, we will not consider it now. In Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978).

The appellant and the State stipulated that the following elements necessary to terminate under Iowa Code section 232.116(1)(e) had been met: (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; and (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. The only remaining issues considered by the trial court were whether the child's best interests required termination, whether the mother had made any progress on the issue of abuse, and whether the requirements of Iowa Code section 232.102(6) were met.

The mother contends that the best interests of T.C. do not require termination of her parental rights and that she has made progress on the issue of abuse. In determining the best interests of the child, we look to the child's long-range as well as immediate interests. In Interest of

Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We consider what the future likely holds for the child if returned to his or her parents. Id. The State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, and it must intercede when parents abdicate that responsibility. Id. Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. Id. The trial court held, and we agree, that the best interests of T.C. require termination. The record shows that T.C. fears returning to her mother, which is unusual in a child of this age. T.C. has vivid memories of the alleged acts that occurred in the home, in which T.C. believes her mother participated. There is also substantial evidence that the mother, while expressing concern for her child, has not taken the necessary steps to prove her ability to take the child back. The child has been in foster care for twenty months, and only recently has the mother acknowledged the occurrence of the abuse. This child should not be forced to endlessly await the maturity of her mother. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id.

Now that the mother has admitted the existence of the problem, even more time must elapse before the child could

be returned to her. The mother has a tremendous number of changes to make in her life and we cannot force this child to wait and see if those changes are successful. The trial court also correctly found that the mother has made no progress on the issues of abuse. The only progress she has made is to admit that abuse could have occurred. This is insufficient. The best interests of the child require termination of the mother's parental rights.

The mother also contends that the Iowa Department of Human Services did not make every effort to reunite her with the child as is required by Iowa Code section 232.201(6). The record shows substantial effort on the State's part to help the mother. She was not accepted into the IFSAP program due to her failure to acknowledge the occurrence of sexual abuse. She was, however, given alternative treatment and two review hearings to challenge the CHINA adjudication. The mother also challenges the failure to admit her into the IFSAP program. She argues that it is unfair to refuse her entry in the program simply because she would not admit that her daughter had been sexually abused. The requirement that the parents acknowledge and recognize the abuse before any meaningful change can occur is essential in meeting the child's needs. In Interest of H.R.K., 433 N.W.2d 46, 50 (Iowa App. 1988). This conclusion is especially true in T.C.'s case. Her doctor testified that T.C. needed her mother to admit

she had been abused. While the potential for unfairness exists, the access to other treatment for the mother obviates it in this case. The requirements of Iowa Code section 232.210(6) are clearly satisfied in this case. We affirm the trial court.

AFFIRMED.