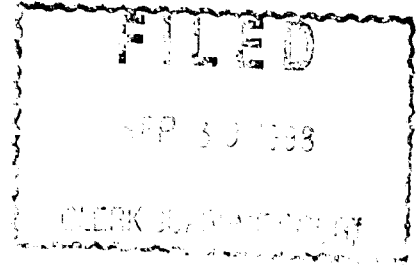


IN THE COURT OF APPEALS OF IOWA

No. 8-511 / 98-0692
Filed September 30, 1998



IN THE INTEREST OF J.J., Minor Child,

L.J., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block,
Associate Juvenile Judge.

The mother of minor child appeals a district court ruling terminating her
parental rights. **AFFIRMED.**

Richard K. Betterton of Snow, Knock, Sevcik & Betterton, Cedar Falls, for
appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney
General, Tabitha Gardner, Student Legal Intern, and Steven J. Halbach, Assistant
County Attorney, for appellee State.

Sara A. Kersenbrock, Waterloo, guardian ad litem for minor child.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

HUITINK, J.

The mother of a minor child appeals the termination of her parental rights to her son. She contends the district court erred because: (1) even though she was incarcerated, she maintained significant contacts with her son and would make reasonable efforts to resume care following her release; and (2) she was pregnant with another child at the time of the termination hearing and the State should not separate her son from his unborn sibling. We affirm.

Lindsay is the mother of Jace, born in August 1995. Lindsay first came to the attention of the Department of Human Services (DHS) in 1995 after concerns were expressed regarding her mental stability. Lindsay has a significant history of mental illness, including bipolar disorder, schizoaffective disorder, and depressive disorder. She has been prescribed lithium and Prozac, but does not take them regularly. In April 1996, DHS received a complaint Lindsay was not supplying Jace with proper shelter and food. Although Lindsay initially failed to accept DHS services, she ultimately agreed she needed help in securing proper housing and care for Jace.

In May 1996, DHS received a report Jace had a human bite mark on his left leg. Lindsay stated she bit Jace, but only in play. DHS deemed it an isolated incident and did not file a child abuse report. DHS appointed a conservator to ensure Lindsay's rent was timely paid. Lindsay was provided with mental health services to ensure her medication was regularly administered. Less than two months later, another complaint alleging denial of critical care was filed against Lindsay. An unannounced visit to Lindsay's home revealed potato chips and empty beer cans strewn around. Jace was found in soiled diapers that appeared to be two days old.

The DHS worker also noted there were cigarette lighters about the home within Jace's reach. An additional unannounced visit demonstrated little effort had been made to improve conditions in the home.

The State filed a CINA petition on Jace's behalf in September 1996. An adjudicatory hearing was scheduled for later in the month, but Lindsay failed to appear, and a warrant was issued for her arrest for failure to appear on outstanding felony charges. In November 1996, a complaint was filed alleging Lindsay used marijuana and crack cocaine in front of Jace. On November 15, 1996, Lindsay was arrested based on numerous outstanding arrest warrants and possession of marijuana. At the time of the arrest, the police found the home unsanitary, with old food and empty beer cans strewn throughout the home. No food was found in the home appropriate for someone of Jace's age. Jace was ultimately placed with a paternal aunt and uncle, in whose care he remains.

While Lindsay was incarcerated, DHS afforded her visitation with Jace. Social workers observed, however, Lindsay seemed disassociated from Jace. They noticed very little verbal or physical contact between them. Lindsay spent visitation times reading or staring, while Jace played by himself.

The district court reconsidered Lindsay's sentence and she was granted probation as part of a residential facility work program. Because of repeated violations of the program's rules, however, Lindsay was returned to prison. A psychological evaluation done in January 1997 provided:

In conclusion, [Lindsay] shows a pervasive personality disorder operating. She meets the criteria of the DSM-IV diagnosis of Antisocial Personality Disorder. She has shown difficulties with

criminal behavior since age five. She also appears somewhat grandiose and extremely self-centered There is also a great deal of evidence to indicate that [Lindsay] may show a pervasive and strongly ingrained criminal thinking style. Staff should be alert that [Lindsay] may initially make a good impression but that she shows a rather strongly ingrained antisocial personality with possible psychopathic features.

In November 1997, the State filed a petition to terminate Lindsay's parental rights. At trial in February 1998, Lindsay argued she had matured the past several years and now was willing to work with social services to obtain reunification with Jace. She also noted she had obtained her GED in 1997 and expected to enroll in a community college to further her education. Lindsay further maintained if her parental rights were terminated, custody should remain with Jace's foster parents. The juvenile court ruled it was in Jace's best interests his mother's parental rights be terminated because she failed to maintain significant contacts¹ and Jace, then two and one-half years old, had been out of the family home for nearly two years.²

¹ Iowa Code section 232.116(1)(d)(3) states:

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. *This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.* (Emphasis added).

² Iowa Code sections 232.116(1)(g)(3) & (4) apply to a child under four years old and state:

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

We review proceedings to terminate parental rights de novo—we review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but they are not binding. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. The court considers what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Lindsay disputes the juvenile court's conclusion she failed to maintain significant contacts with Jace. She argues she did not have significant contact with Jace while in prison because it was not allowed. She claims she maintained significant contact prior to her prison sentence and would again after her parole. She

days.

(4) 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 at the present time.

contends her parental rights were terminated solely because of her incarceration. Lindsay argues she was never afforded an opportunity to become a proper parent, given her age, environment, and educational level. The State responds Lindsay failed to maintain significant contact with Jace during the previous six months and was not capable of resuming his care at the time of the termination.

Lindsay's incarceration cannot serve as an excuse for her conduct. *See, e.g., In re R.L.F.*, 437 N.W.2d 599, 602 (Iowa App.1989). The general rule is unavailability to parent as a result of being incarcerated is no excuse. *Id.* at 602. An incarcerated parent must take full responsibility for the conduct which has resulted in confinement. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa App. 1994); *see In re J.S.*, 470 N.W.2d 48, 51 (Iowa App.1991). Lindsay has demonstrated an inability to obey the law, resulting in her repeated incarceration and unavailability as a parent. Even when she was available, Lindsay did not provide adequate care for Jace. Jace deserves stability and consistent parenting. His aunt and uncle provide such stability and they desire to adopt Jace. We affirm the termination under Iowa Code sections 232.116(1)(d) and (g).

Lindsay also asserts Jace should not be separated from his unborn brother. The State responds Lindsay cites no support for this argument. The State notes in the present case there has not been a chance for siblings to bond as in other cases involving the separation of siblings. Iowa courts have generally tried to keep siblings together. *See e.g., In re Miller Children*, 228 N.W.2d 60, 63 (Iowa 1975); *In re L.B.T.*, 318 N.W.2d 200, 202 (Iowa 1982); *In re J.W.D.*, 456 N.W.2d 214, 219 (Iowa 1990). These cases and others, however, do not directly address the issue of

separating a child from an unborn sibling. We decline to extend the rationale of these cases to the circumstances before us.

AFFIRMED.