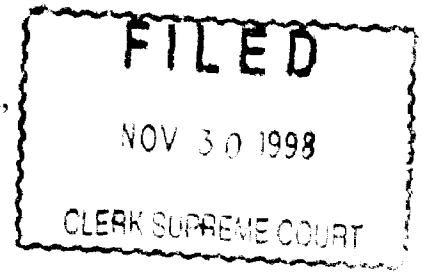
IN THE COURT OF APPEALS OF IOWA

No. 8-513 / 98-0691
Filed November 30, 1998



IN THE INTEREST OF G.D. II and **A.M.**, Minor Children,

G.D., Father,
Appellant,

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Associate Juvenile Judge.

The mother and father of two minor children appeal a juvenile court order terminating their parental rights. **AFFIRMED.**

Stephen W. Newport and Cheryl J. Newport of Newport & Newport, P.L.C., Davenport, for appellant father.

Scott H. Walters, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, Tabatha Gardner, Legal Intern, and Gerda C. Lane, Assistant County Attorney, for appellee State.

Vincent J. Motto, Davenport, guardian ad litem for minor children.

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

VOGEL, J.

The mother and father of two minor children appeal a juvenile court order terminating their parental rights. The father contends the State failed to prove by clear and convincing evidence the children would suffer harm if returned to his care.[1] The mother asserts the juvenile court erred in finding that: (1) she had failed to maintain significant and meaningful contacts with the children and had failed to make reasonable efforts to resume care of them;[2] and (2) the children were at risk if returned to her care.[3] The mother also contends the State failed to offer reasonable services to promote reunification.[4] We affirm.

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[1] Iowa Code section 232.116(1)(e)(4) states:

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.

[2] Iowa Code section 232.116(1)(d)(3) states:

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.

[3] Pursuant to Iowa Code section 232.116(1)(e)(4).

[4] Iowa Code section 232.102(9)(a) states, in pertinent part:

As used in this section, "reasonable efforts" means the efforts made to prevent or eliminate the need for removal of a child from the child's home. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided.

I. Background.

Gary D. and Julie M. are the parents of two minor children, Angela M., born July 29, 1987, and Gary D. II, born May 1, 1990. The children first came to the attention of the Department of Human Services (DHS) in September 1994, when a report was made to the child protective unit that Julie had threatened suicide in front of the children. In March 1995, DHS concluded allegations of denial of critical care were founded. DHS workers concluded the home was barely habitable and a candidate for condemnation.

In October 1995, DHS issued another founded report for denial of critical care after Angela was sent home from school with head lice and ringworm. The State filed CINA petitions on behalf of both children. After this report, Julie gave physical care of the two children to Gary and his new girlfriend, Chris K. In December 1995, the children were adjudicated to be in need of assistance. Following a dispositional hearing, the juvenile court ordered Julie, Gary, and Chris to attend domestic violence counseling and receive substance abuse evaluations.

In March 1996, Julie moved to a small apartment with her boyfriend and her twelve-year-old daughter, Amber. In April 1996, DHS reported Julie had been investigated for cocaine use and denial of critical care. According to Chris, Julie briefly left town with Amber because she had tested positive for cocaine use. During the summer of 1996, Julie saw her children only four times. Her visits were inconsistent and telephone contact was sporadic. Julie failed to attend Angela's

birthday in September 1996. She visited at a later date for one-half hour and gave Angela some money to buy her own gift.

Despite the numerous services offered by DHS, neither Julie nor Gary complied with the case permanency plan. Gary was ultimately jailed in May 1996 for failure to attend the domestic violence program. Gary blamed these problems on Julie and Chris and an inability to pay the class fees. While Gary was in jail, physical care of the children was transferred to his mother.

In December 1996, Gary and Chris failed to attend a case plan meeting. DHS workers reported neither Gary nor Julie complied with the plan and had failed to address issues of domestic violence and substance abuse. Following another meeting in May 1997, Gary's mother claimed she could no longer care for the children. DHS subsequently placed the children in foster care, where they have remained.

Throughout the summer of 1997, DHS offered Julie numerous services to improve her parenting skills, but Julie refused to cooperate. In June 1997, she tested positive for cocaine but failed to attend substance abuse treatment. Gary was also offered services but failed to comply. Between June and October 1997, Gary exercised visitation only six times.

On October 6, 1997, the State filed a petition to terminate Julie's and Gary's parental rights. The termination hearing was held on March 18 and April 8, 1998. On March 20, 1998, the juvenile court issued an order terminating Gary's parental rights. The court opined that Gary failed to cooperate with any services provided

under the case permanency plan and was unwilling to provide any of the specific needs of the children identified by the court. On April 14, 1998, the court entered an order terminating Julie's parental rights. The court noted that although Julie made considerable improvement in her parenting skills, she still refused to participate in substance abuse programs. The court additionally noted that despite three years of services, Julie had not progressed beyond one hour of visitation per week.

II. Scope of Review.

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 are not bound by them. *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 children. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. We consider what the future likely holds for the children if they are returned to their parents. Insight for that determination may be gained from evidence of a parent's past performance, for that performance may be indicative of the quality of the future care that 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).

III. Discussion.

A. Gary.

Gary contends the State failed to show by clear and convincing evidence that the children could not safely be returned to his care. He contends the conditions which resulted in the termination proceedings were caused by Julie. He asserts there was no evidence he could not provide proper parenting for the children, only that he failed to exercise his visitation regularly. He contends he did not attend the batterer's program because he did not have the funds, and that, pursuant to the criminal court disposition, he was not required to attend. He notes that despite the State's claim he failed to address mental health issues, it was not until October 1996 that the court required him to obtain a mental health evaluation. He argues he was unable to complete his mental health evaluations because he was strongly medicated for epilepsy, but now is cured.

The juvenile court terminated Gary's parental rights under Iowa Code sections 232.116(1)(d) and (e). When the juvenile court terminates a parent's rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App. 1995). In addition, failure to argue or cite authority in

support of an issue may be deemed a waiver of that issue. Iowa R. App. P. 14(a)(3); *Luke v. State*, 465 N.W.2d 898, 903 (Iowa App. 1990). Gary does not challenge the termination of his parental rights under section 232.116(1)(d). We affirm the juvenile court's termination of Gary's parental rights under that section.

Even if Gary had challenged the termination under section 232.116(1)(d), we find termination proper under section 232.116(1)(e) also. The requirement of Iowa Code section 232.116(1)(e)(4) is met when a child cannot be returned to the parental home because the definitional grounds of a child in need of assistance under section 232.2(6) exist. *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988); *In re R.R.K.*, 544 N.W.2d at 277. If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277. Despite his proffered reasons for not attending domestic abuse classes or a substance abuse evaluation and any recommended treatment, the fact remains Gary did not do the things which might have demonstrated to the court the children would not be at risk if returned to Gary's care. We find the definitional grounds of 232.2(6)(b) exist.[5] We affirm the termination of Gary's parental rights to Angela and Gary II.

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[5] Iowa Code section 232.2(6)(b) states:

Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

B. Julie.

Julie contends she made considerable improvements in her parenting and homemaking skills. She notes the juvenile court found her home to be clean, healthy and safe. She argues she did not feel a need to attend a domestic violence program since that problem was eliminated upon termination of her relationship with Gary. Julie argues the juvenile court erred in concluding the children could not safely be returned to her care, since she no longer had a domestic abuse problem and her home was found to be stable, clean and safe. She claims she did not always have food on hand for visitation because she was unsure what the children would want to eat and often liked to take them out to eat in order to spend more time with them.

We find Julie failed to obtain a substance abuse evaluation and complete any recommended treatment. She has a chronic problem which would put the children at risk if they were returned to her. Julie knew what was expected of her in visitation but either chose not to or was unable to comply. She also did not insure her children attended school regularly. The State has a duty to see every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). Julie has not demonstrated she can provide the necessary care and supervision her children need and deserve. The

juvenile court properly terminated her parental rights under Iowa Code section 232.116(1)(e).

Julie also asserts the State failed to show she did not maintain significant and meaningful contact with her children as required under Iowa Code section 232.116(1)(d)(3). We disagree. Julie did nothing to increase her visitation from one supervised hour per week. Once the petition to terminate her parental rights was filed, Julie became irregular in meeting with social workers. Section 232.116(1)(d)(3) requires more than visiting with the children. It requires "an affirmative assumption by the parents of the duties encompassed by the role of being a parent." *Id.* Julie had the opportunity but did not assume any financial obligations or diligently seek Title XIX assistance. Other than providing a cleaner, safer home than before, Julie did not make "a genuine effort to complete the responsibilities prescribed in the case permanency plan." *Id.* We find clear and convincing evidence Julie did not maintain significant and meaningful contact with Angela and Gary II as required by Iowa Code section 232.116(1)(d). We affirm the termination of her parental rights under this section.

Julie next contends the State failed to make reasonable efforts to offer services. She argues the State failed to offer her financial assistance in order to attend substance abuse treatment and did not properly direct her to Title XIX benefits. In our de novo review of the record we find numerous services offered to Julie over a

period of years. We find the efforts DHS made to reunite her with her children and to eliminate the need for their removal were more than reasonable.

AFFIRMED.

Huitink, J., concurs; Sackett, C.J., specially concurs.

SACKETT, C.J. (concurring specially)

I concur specially. There is no evidence as to what will happen to the children after termination. Consequently, while the State has shown by clear and convincing evidence grounds to terminate, I cannot find termination in the children's best interest.