**IN THE COURT OF APPEALS OF IOWA**

No. 6-430 / 95-2128

FILED
JUL 26 1996
CLERK SUPREME COURT

**IN THE INTEREST OF**
**P.T.O., Minor Child,**

**D.R.O., Mother,**
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance C. Welu, Judge.

Mother appeals from the juvenile court's order terminating her parental rights to her minor child. **AFFIRMED.**

Martha L. Johnson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and Emily McConkeny, Assistant County Attorney, for appellee-State.

Michael Bandstra, Des Moines, guardian ad litem for minor child

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

**HUITINK, J.**

D.R.O. appeals the juvenile court's order terminating her parental rights to her three-year-old daughter P.T.O. We affirm.

The Department of Human Services (DHS) intervened with this family after P.T.O. was found wondering alone in the parking lot of D.R.O.'s apartment house. When interviewed by DHS, D.R.O. acknowledged recent use of illegal drugs and drug testing disclosed the presence of cocaine in both D.R.O.'s and P.T.O.'s bodies. An investigation by DHS found D.R.O.'s apartment was unclean and hazardous.

D R.O. consented to P.T.O.'s removal from her home and her placement with relatives. On June 10, 1994, P.T.O. was adjudicated a child in need of assistance because of D.R.O.'s failure to properly supervise her, D.R.O.'s inability to care for P.T.O. due to D.R.O.'s drug abuse, and the presence of cocaine in P.T.O.'s body. *See* Iowa Code §§ 232.2(6)(c)(2); 232.2(6)(n) and 232.2(6)(o)(1993). P.T.O. was placed in foster care when her relatives were no longer able to care for her.

The juvenile court's dispositional order included specific services and requirements intended to remediate the problems resulting in P.T.O.'s adjudication. These included D.R.O.'s evaluation for substance abuse within thirty days of the order. D.R.O. was also ordered to produce two clean urinalysis tests before any visitation with P.T.O. was allowed.

P.T.O. has remained in foster care since her adjudication in June 1994. The record indicates D.R.O. had no contact with P.T.O. for at least fourteen months following the adjudication. There is evidence indicating DHS was unable to find D.R.O. from August 1994 until February 1995 when she was located in Missouri. The record further indicates that six of ten urinalysis tests D.R.O. produced were positive between May 1994 and August 1995.

These proceedings were initiated in August 1995. After a hearing, the juvenile court terminated D.R.O.'s parental rights to P.T.O. based on findings that D.R.O. abandoned P.T.O., D.R.O. had made no reasonable efforts to resume custody of P.T.O., and P.T.O. could not be returned to D.R.O.'s care. *See* Iowa Code §§ 232.116(1)(b), 232.116(1)(d) and 232.116(1)(g) (1995).

On appeal, D.R.O. challenges the sufficiency of the evidence supporting the juvenile courts findings. She cites her efforts to comply with the permanency plan and the juvenile court orders. D.R.O. also argues it is DHS and not her who failed to make the necessary reasonable efforts to reunite her with P.T.O.

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. 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.

The primary concern in termination proceedings is the best interest 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 preventative 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).

As stated earlier, the juvenile court found D.R.O. abandoned P.T.O. and terminated her parental rights pursuant to Iowa Code section 232.116(1)(b) (1995). "Abandonment" is defined as:

> [T]he relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code §232.2(1) (1995).

There are two elements necessary to establish abandonment: (1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and (2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting, to the extent practical and feasible in the circumstances, is required. *Id.* It

is not enough to subjectively maintain an interest in the child. *Id.* The court looks to the parent's behavior when determining whether a parent had the intent to abandon their child. *See In re D.M.*, 516 N.W.2d 888 (Iowa 1994); *In re S.K.C.*, 435 N.W.2d 403 (Iowa App. 1988). Abandonment must be established by clear and convincing evidence. Iowa Code § 232.116 (1)(b) (1995).

Following our de novo review, we find clear and convincing evidence indicating D.R.O. has abandoned P.T.O. She had no contact with P.T.O. for fifteen months prior to termination. During this time, D.R.O. failed to submit the required negative urinalysis so she could visit her child. There are no other indications D.R.O. showed any interest in contacting P.T.O., let alone engaging in any affirmative parenting. Her parenting evaluation noted "[s]ince she has not seen her child since June of last year, it appears that she is putting her friends and contacts and perhaps her own needs above those of her daughter."

We have also considered D.R.O.'s arguments that she has made sincere efforts to comply with the necessary evaluations and submitted clean urinalysis tests in the spring and summer of 1995. Her efforts, however, are too little and too late. We have repeatedly stated that children in these circumstances cannot afford to endlessly await their parent's maturity. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). The juvenile court correctly rejected these assertions, and the decision to terminate D.R.O.'s parental rights based on abandonment is affirmed.

Our decision to affirm the juvenile court on this ground obviates the need to consider the remainder of D.R.O.'s contentions. The judgment of the juvenile court is accordingly affirmed in its entirety.

**AFFIRMED.**

**SACKETT, C.J.** (specially concurring)

I concur specially without opinion.