

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 28 1988

CLERK SUPREME COURT

IN THE INTEREST OF J.V.A.,)
A Child.)

K.V.A., Mother,)

Appellant.)

8-399
88-127

1

Appeal from the Iowa District Court for Woodbury County
(Juv. No. 2991), L. M. Goldblatt, District Associate Judge.

The natural mother of a child appeals from the juvenile
court order terminating her parental rights. **AFFIRMED.**

Richard L. McCoy, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General; Valencia Voyd
McCown, Assistant Attorney General; and Peter E. Van Etten
and Teri J. Ladwig, Assistant Woodbury County Attorneys,
for appellee State.

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

DONIELSON, P.J.

2

The natural mother, K.V.A., appeals the juvenile court's order terminating her parental rights. The only issue is whether there was sufficient evidence to establish that the child cannot safely be returned to her custody. We affirm.

The child in question, J.V.A., is a boy born in December 1981. At the time of his birth, his mother was twelve years old. The child was placed in foster care almost immediately and has remained in foster care all of his life.

For the first two or three years of the child's life, the mother was offered visitation rights, which she exercised sporadically and inconsistently. The mother also vacillated on the question whether to give the child up for adoption or retain her parental rights. The mother was offered parenting classes and various forms of counseling, but she made little progress in these endeavors because of a resentful attitude and a lack of attentiveness.

In May 1984, the State filed a petition to terminate the natural mother's parental rights based on Iowa Code section 232.116(5). That October, the juvenile referee terminated the mother's parental rights. (The father's rights were terminated because of abandonment.) In November 1984, the mother applied for a "rehearing" of the termination order. It was not until December 1987 that the district judge confirmed the referee's order.

Iowa Code section 232.116(5) (1987) permits the juvenile court to terminate the parent-child relationship if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve of the last eighteen months, and 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. Section 232.102 provides the child will be returned to their home if the preponderance of the evidence shows the child will not suffer harm in the manner specified in section 232.2(6).

The types of harm specified in section 232.2(6) include the physical abuse or neglect of the child, the harm caused by the parent's failure to exercise reasonable care in supervising the child, and the failure to exercise a minimal degree of care in supplying the child with adequate food, clothing, or shelter and refusing other means made available to provide such essentials. Proof of any one of the types of harm delineated in section 232.2(6) is sufficient to support termination. See In re K.L.C., 372 N.W.2d at 228.

Iowa Code section 232.116(5) was amended by the 1987 legislature. The new provision was codified at section 232.116(1)(e) (Supp. 1987) and was effective on July 1, 1987. The new provision reads:

e. The court finds that all of the following have occurred:

(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.

(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.

Iowa Code § 232.116(1)(e) (additions underlined). This change amounts to replacing the word "and" which came after the subparts (now (1) and (2)) with the words "all of the following." This change does not affect the meaning of the provision but only serves as a clarification. Therefore, our result is the same under either version of the statute.

Our review of proceedings to terminate a parent-child relationship is de novo. We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses the court has heard and observed first hand, but we are not bound by them. Our primary concern is the best interests of the child. We look to the child's long-range, as well as immediate, interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We consider what the future holds for the child if returned to his or her parents. Id. 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. Id. Our statutory termination provisions are

preventative as well as remedial. Id. They are designed to prevent probable harm to a child. Id.

The State must prove the allegations of the petition to terminate by clear and convincing evidence. See Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982). This includes the requirement that before the court may terminate the parental rights there must be clear and convincing proof that the child will suffer harm in a manner specified in section 232.2(6). See In re Chad, 318 N.W.2d 213, 219 (Iowa 1982). The child should not be forced to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). He or she need not endlessly await the maturity of his or her natural parent. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if enough time (twelve to eighteen months) has passed and the parent still cannot take care of the child. Id.

On October 18, 1984, the juvenile trial court referee found that clear and convincing evidence existed to support that custody of J.V.A. could not be returned to K.V.A. as provided in Iowa Code section 232.102 and that parental rights should be terminated and termination was in the best interest of J.V.A. Specifically, it was found that with regards to her child, K.V.A. failed to take minimal steps to regain custody by failing to comply with court-ordered visitation; she failed to bond with J.V.A.; she made

numerous statements expressing her desire to terminate her parental rights; she resisted efforts by the Iowa Department of Human Services to assist her to regain custody of J.V.A.; and there has been little improvement in the mother-child relationship in the two and one-half years that J.V.A. has been under the jurisdiction of that court. Based on these findings, J.V.A. was not returned to K.V.A. because he could not be protected from the harms of Iowa Code sections 232.2(6)(b), (c), and (g).

K.V.A. challenges the sufficiency of the evidence presented regarding the harm the child would suffer if returned to her. K.V.A. asserts she has a fundamental liberty and privacy interest in raising her child. Citing In the Interest of Chad, 318 N.W.2d 213 (Iowa 1982), K.V.A. argues that even though she is not a model parent, she is a capable parent. There is no clear and convincing proof that by conduct K.V.A. has forfeited her rights.

We disagree with the mother. Her lack of maternal interest in J.V.A. is apparent from the record. Despite efforts to teach K.V.A., she was unable to perform the basic tasks of properly feeding and diapering J.V.A. As J.V.A. got older, K.V.A. resisted further attempts at training and became very rough in her handling of him. K.V.A. had trouble dealing with J.V.A. on an individual level and preferred the company of her friends and relatives. There were observed incidents where K.V.A.

failed to properly supervise J.V.A., where she threatened him, and once she slapped his face inappropriately. There were long periods where K.V.A. did not visit J.V.A. at all. When she did visit, the interaction between mother and son was observed to be minimal and there was no evidence of bonding.

J.V.A. is not required to wait for his mother to mature. In Interest of T.D.C., 336 N.W.2d at 744. Nor must he endlessly suffer the limbo of foster care. Long, 255 N.W.2d at 146. Considering what J.V.A.'s future would be if returned to K.V.A., we determine it is in J.V.A.'s best interest to terminate K.V.A.'s parental rights.

There is clear and convincing proof in the record that if returned to K.V.A., J.V.A. cannot be protected from the harms of abuse or neglect (Iowa Code § 232.2(6)(b)), inability to supervise (id. § 232.2(6)(c)), and failure to supply adequate food, clothing, and shelter (id. § 232.2(6)(g)). Therefore, we affirm the lower court's decision terminating the parental rights of K.V.A.

AFFIRMED.