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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-576 / 89-1003

IN THE INTEREST OF M.C.C. and J.J.C., Minor Children;

M.C., FATHER,

Appellant.

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

The father of the children appeals from the juvenile court order terminating his parental rights. **AFFIRMED.**

Marsha J. Arnold, Davenport, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State of Iowa.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

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The father of M.C.C. and J.J.C. appeals from the juvenile court order terminating his parental rights. He contends that the juvenile court erred in: (1) denying his motion to dismiss the termination since he was not given an opportunity to correct his situation; (2) failing to dismiss the termination petition for not providing him fair notice of the grounds for the termination; and (3) finding clear and convincing evidence that the minor children could not be returned to his custody. We affirm.

On December 16, 1986, a petition was filed alleging that M.C.C., born in August 1985, and J.J.C., born in August 1986, were children in need of assistance. The petition alleged that the children's parents were involved in criminal sexual activity and that the children were living in unsanitary and inadequate living conditions. In February 1987 M.C.C. and J.J.C. were adjudicated as children in need of assistance. The children have remained in foster care since December 1986.

Both parents were arrested in 1986 and subsequently incarcerated for sexual acts perpetrated upon teenagers living in their home. At the time of the termination, the father remained in custody at the Mount Pleasant Correctional Facility.

On January 13, 1989, a petition seeking termination of both parents' parental rights was filed. The basis for the termination referred to the exhibits attached to the petition. The father's motion to dismiss the petition was denied.

Following a hearing, the juvenile court ordered that the mother's (C.C.) and father's (M.C.) parental rights be terminated. The court found little progress in either party's attempts to resolve their problems. Only M.C. has filed this appeal.

On appeal, we review parent-child terminations de novo. In Interest of D.T., 418 N.W.2d 355 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Central to a determination of this nature are the long-term, as well as immediate, best interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has a duty to see that every child receives minimally adequate care and treatment and will intercede when parents abdicate their responsibility. Interest of Dameron, 306 N.W.2d at 745.

M.C. contends the juvenile court erred in denying his motion to dismiss the termination petition. He asserts that he was denied his due process rights because he was not given an opportunity to correct the situation which led to the juvenile court's involvement.

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The essence of M.C.'s claim is that termination proceedings violate a parent's due process rights if they are not given an opportunity to prove they are capable to provide care for their children after their incarceration. We agree with the juvenile court's finding that Iowa Code section 232.116(1)(e)(1)(2)(3) does not provide a parent such an opportunity.

Iowa Code section 232.116(1989) enumerates the grounds by which termination of parental rights may be ordered. Statutory termination provisions require a physically or sexually abusive parent "be offered services to correct the situation which led to the abuse before a termination of parental rights may be ordered." In Interest of N.H., 383 N.W.2d 570, 572 (Iowa 1986); Iowa Code § 232.116(3)(c). Section 232.116(2)(a) provides that a parent's imprisonment is a proper factor to consider in determining whether to terminate the parents rights.

In this case M.C. and C.C. were alleged to be involved in criminal sexual activities and child pornography. The mother, C.C., pled guilty to a charge of pandering and was paroled prior to the termination hearing. The father, M.C., pled guilty to the charge of lascivious acts and was sentenced for a period not to exceed five years. The children were placed in foster care December 16, 1986. Both children were adjudicated children in need of assistance on February 6, 1987. At the time of the

termination hearing, the children had been in foster care over two (2) years--the entire period of their father's incarceration.

Correctional services were provided to M.C. while he was incarcerated. He attended drug and alcohol programs while at Anamosa Correctional Facility. While at Mount Pleasant Correctional Facility he unsuccessfully completed a sex offenders' program and refused to complete a psychological evaluation.

The Iowa Supreme Court has held a 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). Children need not endlessly await the maturity of their natural parents. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). We find no error on the part of the juvenile court in denying M.C.'s motion to dismiss the termination petition.

Next, M.C. contends he was denied procedural due process. He claims the termination petition should have been dismissed as he was not given fair notice of the grounds for the termination. We disagree.

At the termination hearing M.C. requested a motion to dismiss the termination petition for failure to provide proper notice of the grounds for termination. The juvenile court overruled this motion stating:

> The attachments indicate both the reasons that the children were adjudicated and removed and the present situation of the father. I think that is sufficient notice of the primary grounds that the State is relying upon.

We agree.

The record reveals that M.C. had adequate notice regarding the factual basis for the termination. See In Interest of H.R.K., 433 N.W.2d 46, 49-50 (Iowa App. 1988). The case permanency plan attached to the petition noted that M.C. and C.C. denied M.C.C. and J.J.C. critical care. The plan found three conditions of denial of critical care; adequate food and shelter, and improper supervision. The plan further noted the incidents of domestic violence and substance abuse problems in the household. Additionally, the plan noted that both M.C. and C.C. were arrested and charged with child pornography and pandering. At the March 1, 1989 hearing on M.C.'s first motion to dismiss the termination petition the court found that the facts in relation M.C.'s ability "to provide his minor children with a home, medical and health protection, food, clothing, loving care and affection" needed to be determined at the termination hearing. We find the March 1, 1989 ruling, the petition, and the attached exhibits gave M.C. proper notice of the factual basis upon which termination was being sought.

Finally, M.C. challenges the sufficiency of the evidence to prove that the children cannot be returned to his custody.

Iowa Code section 232.116(1)(e) (1989) permits the juvenile court to terminate the parent-child relationship if it finds 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.

The father concedes that the first two requirements have been met. He challenges the third requirement. He urges that there was not clear and convincing evidence presented to support the juvenile court's determination that the children's custody cannot be returned to him. We disagree.

The third requirement of section 232.116(1)(e) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist. In Interest of A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

As previously noted, the children's best interests are central to the termination of parental rights. See Interest of Dameron, 306 N.W.2d at 745. We consider what the future holds for the child if returned to his or her parents. Id. Essential to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight may be gleaned as

to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). The past behavior of the parent is an important factor to be considered by the court. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). Iowa statutory termination provisions are preventative as well as remedial. Interest of Dameron, 306 N.W.2d at 745. They are designed to prevent probable harm to a child. Id.

The State must prove by clear and convincing evidence the allegations contained in the termination petition. See In Interest of C.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988); Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 599, 617 (1982).

Upon our review of the record we agree with the juvenile court's conclusion that the children cannot be returned to M.C.'s custody. M.C. pled guilty to the charge of lascivious acts perpetrated upon teenagers living in the family home. He admitted to a social worker that "at times he was physically aggressive towards C.C. [his wife] and that he did sexually abuse a 12 year old girl, but he stated that he felt she wanted this." M.C.'s correctional counselors indicate that he did not successfully complete the sex offenders' program offered by the Department of Correction. Additionally, he has a long history of drug and alcohol abuse. The juvenile court stated in its findings of fact:

> Credibility is attributed to the social workers who testified that in their opinion the children could not be returned safely to either parent. With regard to [M.C.], the Court concurs that he has not benefited from the services offered in the correctional system. He is highly likely to return to his prior lifestyle. There is a very great likelihood these children would continue to suffer sex abuse, physical abuse, and neglect and denial of critical care if returned to his custody.

In a "Case Permanency Plan" dated February 19, 1989, social worker Pat Fennelly states:

> The [social worker] investigator also noted incidents of domestic violence, involving injuries to [C.C.]. [M.C.] actually hit her while she was holding one of the children, and at one point took the baby hostage, requiring police intervention. There was also ample evidence of substance abuse problems. It was alleged that both adults participated in sexual activities in front of the children, engaged in pornography and drug deals with juveniles. [M.C.] and [C.C.] were arrested and charged with child pornography and pandering.

On March 27, 1987, social worker Kim Riley-Quinn prepared a "Social Investigation" report for the Scott County Department of Human Services (DHS) regarding M.C.C. and J.J.C. DHS received a referral regarding this case on December 16, 1986. The report noted that the children's family had received previous assistance from social services. The Visiting Nurse Association had been involved with the family for approximately one year prior to December 16, 1986. Their function was to provide the family with a home aide who would instruct C.C. on the care of her children, covering such issues as hygiene needs and household planning.

The DHS report notes: "The home aid [sic] indicated that the children were often not bathed and their diapers were not changed when needed. She reported that [M.C.], the father of the two boys, was a violent man and the home aid [sic] had observed injuries on [C.C.] once following a domestic dispute." Additionally, the home aide reported that frequently baby bottles were found with sour milk in them. The home aid indicated that there was little progress in the household even with their assistance.

In a letter to Scott County Juvenile Court Services Sherry Roffe, Correctional counselor at the Mount Pleasant Correctional Facility, stated:

> There is, in my opinion, cause for concern about Inmate [M.C.'s] present attitude and emotional state. It appears, by his refusal to complete the psychological evaluation and stating he wants to discharge his sentence that he still sees himself as a victim. He apparently, by this attitude, has not really grasped the seriousness of his offense. Also, it seems by his unwillingness to complete the program that he is satisfied with himself as he is and sees no further need for change or help. This is an extremely dangerous attitude for a sex offender to take as this is usually the first step towards relapse.

We find clear and convincing evidence supports the conclusion that M.C.C. and J.J.C. would suffer abuse and harm or both as defined in Iowa Code section 232.2(6) if returned to M.C.'s custody. The State has proven the allegations in its petition to terminate the father's parental rights as to M.C.C. and J.J.C. by clear and convincing evidence.

We affirm the decision of the juvenile court.

AFFIRMED.