

IN THE COURT OF APPEALS OF IOWA

No. 1-050 / 90-1463

FILED

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CLERK SUPREME COURT

IN THE INTEREST OF J.A.P. AND J.A.F., Minor Children,

G.P., Mother, and J.F., Father,

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Appellants.

Appeal from the Iowa District Court for Polk County,
Vincent M. Hanrahan, Judge.

Parents of two children appeal from the termination of
their parental rights. **AFFIRMED.**

Todd E. Babich, Des Moines, for appellant mother.

Wendell Harms, Des Moines, for appellant father.

Bonnie J. Campbell, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Kathrine S. Miller-Todd,
Assistant Attorney General, for appellee State.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

HABHAB, J.

This case involves two children, boys born in April 1987 and February 1989. Their parents have lived together in the past but are no longer doing so. After the parents' separation, the children lived with the mother.

The mother suffers from mental retardation, and the father is described as low-functioning, with emotional and mental disabilities. The father has a history of sexually abusing young girls and has been convicted of lascivious acts with a child. Counselors reported that he has made little progress in addressing his sexual attraction to children and has a poor prognosis for improvement on that subject. So far as is known, he has shown no sexual interest in young boys and has not sexually abused the children involved here.

The younger child was hospitalized with a broken leg and bruises when he was about one month old. Physical abuse was the suspected cause of these injuries. In addition, the parents consistently failed to provide a safe environment, adequate nutrition, or adequate supervision. Both children suffer from serious developmental delays; the parents are unable to address these matters and seem unconcerned about them.

The children were adjudicated to be children in need of assistance in March 1989. In May 1989 they were placed in foster care, where they have since remained.

In June 1990, the State filed the present petition to terminate the parental rights of both parents with respect to both children. After a hearing, the juvenile court did terminate the parental rights of both parents. The juvenile court relied on Iowa Code section 232.116(1)(g); that statute permits termination if children are three years of age or younger, have been adjudicated CINA, have been in foster care for six of the last twelve months, and cannot safely be returned to their parents' care.

Both parents have appealed from the termination order. The parents have filed separate briefs. Each parent challenges the sufficiency of the evidence to establish that the children cannot safely be returned to his or her care. Each parent argues that termination is not in the children's best interests. In addition, the mother contends the termination was erroneous because the State had not made reasonable efforts to prevent or eliminate the need for removal from the mother's home. She asserts the State thereby breached a duty imposed by Iowa Code section 232.102(4). She argues that in light of her mental handicap, the State gave her too little time to improve her parenting skills.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility

of witnesses, but we are not bound by those determinations. 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 to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

The parents both argue there was insufficient evidence to support the finding that the children could not be safely returned to them. However, after a thorough review of the record, we find the trial court was correct in its ruling and accordingly affirm.

The mother, who is low functioning, was living in the Crest Supervised Apartment Program when the children were removed from the home. The incident prompting the removal involved the youngest child. On March 14, 1990, the youngest child, J.A.F., was admitted to Blank Memorial Hospital in Des Moines. The doctor who cared for the child found the fracture of the child's leg to be in more than "one piece" and further determined the fracture occurred

through the thickest portion of the largest long bone of the body. The doctor suggested this type of injury implied a significant amount of force. It is important to note that this severe injury occurred while the mother was in the Crest Supervised Apartment Program, and yet even with these protective mechanisms in place, the injury still occurred. In addition to the broken leg, the baby also had bilateral bruises on his eyelids and bruises on his forehead. He also had an incision on his ear.

The mother explained the injury saying she had grabbed the baby above the knee and flipped him over while changing his diaper and assumed the fracture must have occurred during this time. Investigation also showed the child had been admitted to the hospital two weeks prior to this incident for failure to thrive. Upon the report to DHS regarding this injury, both children were removed from the home.

The record indicates the mother has significant problems caring for the children. The social worker in charge of this case reported occasions where the children were playing with glass and the mother did not take the glass away until one of the children had injured himself. On another occasion, one of the children was playing with a deflated balloon and was inserting the balloon into his mouth. The social worker reported the mother failed to take the balloon away from the child until the social

worker told her to remove the balloon from the child's mouth.

There were also two founded reports of denial of critical care with regard to J.A.P. When the child was one year old, DHS found the mother was taking the child to a park and keeping him there all day long during days of intense heat. The child had a day care to attend but the mother often failed to take advantage of transportation provided for her to transport the child to the center. Another report found the mother had dropped the child twice and the child had bruises about the face and head.

The father of the children, J.F., is also a low-functioning adult. In addition, he is a pedophiliac and has been convicted of sexual abuse of young girls. While the father has had no further problems, clinical psychologists who have worked with him find him to be socially and sexually immature. The psychologist recommended J.F. not be put in a caretaker role because his emotional needs were still such that he could still see the children as an appropriate avenue to have his needs met. The psychologist specifically had concerns with regard to J.F. because he has not fully accepted his problem and continues to deny having a problem of attraction to children. Therapy was recommended for J.F. for a period of two years; however, he chose to discontinue the therapy because he did not deem it necessary.

With extensive services in place, there were several child abuse referrals and the youngest child suffered serious injuries. Additionally, both parents attended the PINC (Parent Infant Nurturing Program) program, which is intended to provide instruction on care for the children. These parents were enrolled in this program for over a year and the counselors still could not recommend that the children be returned to their parents. The counselor stated at trial that this family has had more time in the program than any other family.

It is unnecessary to take from the children's future any more than is demanded by statute. Stated otherwise, plans which extend the twelve-month period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency. Of course some suggested extensions will prove to be appropriate. The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home

In Interest of A.C., 415 N.W.2d 609, 614 (Iowa 1987). The parents contend they should be given more time to learn to parent because of their deficiencies. We do not see that an extension would benefit the children. Additionally, the evidence is clear that qualified counselors did not feel further counseling would be of any assistance.

The parents also do not seem to understand how significantly delayed the children are. J.A.F., particularly, is in need of therapy; however, the mother has resisted therapy and neither parent has followed

through with recommendations. These children have been in foster care for sixteen months and there is no indication they could be returned to their parents at any time soon. The parents have now separated, and both parents have stated they do not believe they could care for both children by themselves.

Once again we are faced with a difficult case. Both parents love their children; however, they have failed to give any indication they could properly care for them. We agree with the trial court that it would be in the best interest of the children to terminate the parental rights of G.P. and J.F. We affirm.

AFFIRMED.