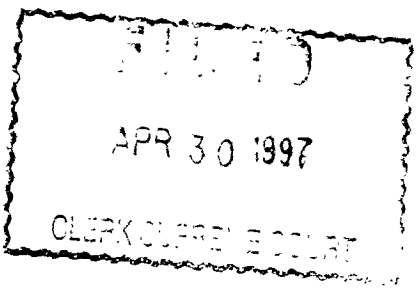
IN THE COURT OF APPEALS OF IOWA

No. 7-194 / 96-1969



IN THE INTEREST OF M.J.G., Minor Child,

S.S.G., Mother,
Appellant,

M.G., Jr., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

A mother and father appeal from the termination of their parental rights. **AFFIRMED.**

Craig H. Lane, P.C., Sioux City, for appellant mother.

Thomas A. Vakulskas of Vakulskas & Hoffmeyer, P.C., Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Chris Odell, Assistant Attorney General, and Marleen Loftus, Assistant County Attorney, for appellee State.

Joseph Kertels, Sioux City, for minor child.

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

HABHAB, C.J.

Susan and Moses are the parents of Marcus, born June 5, 1996. Immediately after his birth, Marcus was removed from Susan's care. Susan and Moses have four children together and each has two children from other relationships. Both Susan and Moses have had their parental rights terminated with respect to all of their other children. The terminations resulted from the physical and/or sexual abuse of the children by the parents and the denial of their critical care.

Proceedings to terminate the parental rights of Susan and Moses to Marcus were commenced in July 1996. The State sought to terminate their rights under Iowa Code section 232.116(1)(c) (1995).[1]

A termination hearing was held in September 1996. At that time, Moses was in a federal prison in Minnesota with an expected discharge date of May 1998. The juvenile court filed an order on October 15, 1996, terminating the parental rights of Susan and Moses to Marcus pursuant to section 232.116(1)(c). The court found the family had received a substantial amount of past services with little rehabilitative benefit and Marcus would clearly suffer harm if left in his parents' care.

On appeal, Susan contends she was never given an opportunity to parent

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[1] Iowa Code chapter 232.116(c)(1) provides for termination when the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance due to physical or sexual abuse or neglect resulting from the acts or omissions of one or both parents, and the circumstances which led to the adjudication continued to exist after the parents were offered or received services to correct them.

Marcus, was denied reasonable contact with him, was denied services to reunite them, and is bonded to him. Essentially, she contends her parental rights should not be terminated when she has never had the chance to care for Marcus and has never abused or mistreated him. Moses claims the State failed to prove by clear and convincing evidence that the best interests of the child would be served by terminating his parental rights. He argues he has never had any contact with the child and it is "unfair" to terminate his rights based solely upon his past conduct.

I. Scope of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> 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 T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Clear and Convincing Evidence. Both Susan and Moses maintain there is not clear and convincing evidence within the record to support termination of their parental rights. Moses argues it is not "fair" to terminate his parental rights based on his past failures with his other six children. Susan contends she should have been given an opportunity to parent Marcus and points out she has never abused or mistreated him.

We reject the parties' contentions in this regard as Iowa Code section 232.116(1)(c) clearly is preventative as well as remedial and "mandate[s] action to prevent probable harm to a child and do[es] not require delay until after harm has occurred." *Dameron*, 306 N.W.2d at 745. Past behavior of a parent is an important fact to consider when determining whether or not termination of parental rights is warranted. *In re M.H.*, 367 N.W.2d 275, 278 (Iowa App. 1985). Insight into what the future holds for a child if the child is returned home is gained from a parent's past performance. *In Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

In terminating the parental rights of Moses to two of his other children, the juvenile court gave the following summary of his past parenting:

> Moses is the named perpetrator in five previous child abuse investigations which involve both physical abuse and sexual abuse of the children, he has previously had his parental rights terminated to the other children he has fathered in another relationship, he has provided no financial support to these children, he is a convicted drug dealer who is currently incarcerated. . . . [T]here is a history of domestic violence between Susan and himself and he has made no effort to involve himself in corrective services.

Similarly, Susan also has a poor history of parenting. She has a long history of neglecting and physically abusing the children in her care and has shown no improvement despite the myriad of services she has been offered over the last ten years. Psychological evaluations of Susan in 1988 and 1992, respectively, indicate:

> Susan certainly seems incapable of functioning as an appropriate parent. She seems to have no statements of remorse or appropriate concerns for her children and would not be motivated to make any necessary changes. It would seem a disservice to these children to return them to this insecure situation.
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> [W]ithout question it would be the recommendation of this evaluator that Susan not be given the care of her children for any extended period of time and that possibly even visits of any kind be minimal.

In terminating Susan's parental rights to her son Trey in 1996, the juvenile court made the following findings:

> This matter was brought to the court's attention after it was alleged that Susan had been hitting Trey several times on the head with her hand while shopping. Witnesses state that Susan was out of control and strangers had to tell her to stop hitting Trey.
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> There were other allegations that involved Susan striking the child when living at the A.I.D. Shelter. On one occasion, injuries were noted on the child which included a knot on the forehead and other bruises. Susan was often heard to yell and scream at the child using profanity and was generally inappropriate with him.
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> . . . .
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> [O]n at least one occasion . . . Susan grabbed Trey very forcefully and threw him into her room. She was heard yelling at the child. It was after this occasion that Trey was seen with bruises.
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> . . . .
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> On [another] occasion . . . a CHINA guide arrived [and] Susan became very angry. . . . Susan made an action by raising her hand over her head and bringing it down which led the CHINA guide to believe that Susan was about to hit Trey with a telephone.

The record reflects that Susan intends to reunite with Moses upon his release from prison despite the fact he has physically and sexually abused their children. Moses has also abused Susan in the past; however, she continues to deny that either of them is in need of counseling.

We find there is clear and convincing evidence to support the termination of the parental rights of Susan and Moses. The record establishes Marcus cannot be returned to either of them at this time as it is probable he, like the eight other children of the parties, would suffer abuse or neglect if left in the care of either party. Marcus needs a safe, stable home and a nurturing environment. Neither Susan nor Moses have been able to provide this type of environment in the past for any of their children. Despite the numerous services made available to each of them over the past several years, neither party has shown an ability or willingness to provide a suitable home for Marcus in the future.

We find clear and convincing evidence within the record to establish Marcus cannot be returned to the care of Susan or Moses. We affirm the juvenile court's decision and find the best interests of the children mandate the termination of the parental rights of Susan and Moses.

III. Services Provided by the Department. Reasonable services must be provided in an attempt to preserve the family unit before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Susan argues the Department failed to make reasonable efforts to return Marcus to her care.

Our review of the record reveals a plethora of services have been offered to Susan.[2] She has resisted many of them. Despite receipt of those services which she did not refuse, she has made no progress over the past several years. She has continued association with Moses despite his abusiveness to her and the children and intends to reunite with him when he is released from prison. She denies that she or Moses needs counseling and maintains she has never been abusive to any of her children despite evidence to the contrary.

We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)). In our de novo review of the record, we find Susan has been offered services necessary to meet her individual needs. We reject her argument that the Department failed to provide

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[2] Services which have been provided to Susan include, but are not limited to, the following: parenting skill and development training, weekly in-home and parenting classes, therapy services, young mother's group, parents without partners group, public health nurse, battered women's group, employment assistance, GED classes, JTPA program, home health aide, homemaker services, parent survival program, Crittenton Center, and Boys and Girls Home.

reasonable services for reunification. We affirm the termination of her parental rights.

AFFIRMED.

Cady, J., concurs; Sackett, J., specially concurs without opinion.