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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF R.J., D.J., B.J., & B.J., Minor Children,	)	
E.J., Mother,	)	8-261 / 87-1813
Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (Juvenile J-585), Stephen C. Clarke, Juvenile Referee.

The mother appeals from a juvenile court order terminating her parental rights. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

Douglas V. Coonrad, Hudson, for appellant mother.

Thomas J. Miller, Attorney General; Kathrine S. Miller-Todd, Assistant Attorney General; and Thomas Bower, Assistant Black Hawk County Attorney, for appellee State.

Sharon Briner, Cedar Falls, guardian ad litem, for the children.

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

HABHAB, J. 169

The four children in question were born in 1981, 1982, 1983, and 1984. They lived with their mother until July 1985. The children's father, D.B., has had no significant contact with the children and has made no effort to assume custody of the children.

In July 1985 the children were placed in foster care on an emergency basis after their mother left them with a sixteen-year-old baby-sitter for two days while she was out "partying." The children were adjudicated to be children in need of assistance in October 1985; they have been in foster care since that time.

The record reveals that from July 1985 to the fall of 1987, the mother was unable to control her excessive drinking. During this period there was intervention and assistance by social work professionals concerning her dependency problem. However, the record further reveals that at one point she did complete an alcohol treatment program with apparent success. Regrettably, she resumed drinking a few months later after the State allegedly breached a promise to return the children to her if she abstained from the use of alcohol.

In September 1987, after concluding that the mother's alcoholism was intractable, State authorities filed a petition to terminate the parental rights of both parents. The juvenile court granted this petition and terminated the

parental rights of both natural parents on the grounds stated in Iowa Code section 232.116(5).

I.

The mother has appealed from the termination order. She challenges the sufficiency of the evidence to prove that the children cannot safely be returned to her custody. She argues that all her parenting deficiencies result from alcoholism, that she had successfully completed a three-month residential alcohol program in Cedar Rapids at the time the State allegedly breached its promise to return the children, and that she is likely to recover from her alcoholism in the near future.

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 will suffer harm specified in Iowa Code section 232.2(6) (1987) if returned to the parent. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985).

The types of harm specified in section 232.2(6) include the physical abuse or neglect of the child and the harm caused by the parent's failure to exercise reasonable care in supervising the child. 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.

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 981). 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).

Appellant's case first came to the attention of the Department of Human Services (DHS) when she left her

children with a sixteen-year-old baby-sitter. She departed from her home at 5:00 p.m. on July 20, 1985, promising to return by 2:00 a.m. on July 21, 1985. The children left with the baby-sitter included appellant's four children, then ages four, three, nineteen months, and eight months, and a friend's children, then ages four, three, and one. At approximately 11:30 p.m. on July 21, 1985, the baby-sitter called the police because the mothers had not returned. The children were taken into custody at 1:00 a.m. on July 22, 1985, and a CHINA petition was filed on July 23, 1985.

Even before the children were stipulated to be children in need of assistance, the DHS commendably began working with the mother on her needs. These efforts included alcohol abuse evaluation and required compliance with any recommended treatment. She entered into a social contract with DHS on September 5, 1985. There were repeated attempts to persuade the appellant to enter an alcohol treatment program. These efforts were unsuccessful for at least a period of sixteen months.

The appellant by far has not been a model mother. She has a series of arrests that are for the most part alcohol related. She has not kept appointments that were arranged to help her overcome her dependency problems. She has missed court hearings and has on a number of occasions been cautioned that if she did not show progress, termination proceedings would be instituted.

The appellant was informed that if progress was not forthcoming by December 1986, a petition for termination of parental rights would be filed. Responding to that information, the appellant entered a residential alcohol treatment program in Cedar Rapids, Iowa, on December 8, 1986. She cooperated fully with the program and successfully completed it on March 18, 1987. A review hearing was held on April 29, 1987, at which time appellant was cautioned that if she took a step backwards, the DHS would be instructed to file a petition terminating her parental rights. A review hearing was set for three months after the hearing. Appellant's visitation with her children increased. She was allowed visitation from Fridays to Sundays. Her increased visitation was based upon her ability to follow through on her aftercare program.

She met another of the goals set for her by the DHS, completion of her GED, while she was at the Cedar Rapids facility. After graduation on March 18, 1987, appellant returned to Waterloo and complied with the requirements which were placed upon her by her social contract, including maintenance of sobriety.

The appellant believed she had been promised by her social worker at DHS, Teresa Zahren, that if she completed the residential program and maintained sobriety for three months, her children would be returned to her. Ms. Zahren testified that appellant may very well have thought that

such a promise was made. She contends, however, that a recommendation would have been made that the children be returned and not a promise. The children were not returned.

After the children were not returned as she believed she had been promised, appellant again started drinking. When DHS discovered that she had been drinking, a termination petition was filed.

Ms. Zahren testified that appellant's alcoholism is the sole problem and obstacle to a normal relationship with her children. We infer from this that if appellant could overcome or would work towards overcoming her alcohol problem, then the children should be allowed to remain with her. Although, as the record indicates, there will undoubtedly be problems in attaining and maintaining sobriety, when appellant thought she would regain custody of the children, she did work towards that end. This demonstrates a willingness to take measures to secure the return of her children.

Other factors are favorable towards appellant as well: (1) Testimony at trial revealed that appellant has a close relationship with the children. In fact, Ms. Zahren, the social worker, testified there was a desire on the part of the older children to reunite with their mother. (2) Appellant's sister testified that she was unlikely to leave the children again, as she did on July 20-21, 1985.

Our review of the record does not demonstrate by clear and convincing evidence that harm will befall the children if parental rights are not terminated at this point in time. Accordingly, we reverse the termination order and remand to the district court. The children should remain children in need of assistance. Appellant should be given a further opportunity to complete a test period of sobriety and continued contact with her children as she does so. She should also receive counseling to assist her with the problems presented should conditions warrant the return of the children to her. By this ruling we do not mean to preclude the bringing anew of termination proceedings should the circumstances and facts warrant such action.

REVERSED AND REMANDED WITH INSTRUCTIONS.