IN THE COURT OF APPEALS OF IOWA

No. 3-099 / 92-1676

FILED
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CLERK

IN THE INTEREST OF T.D.W. and T.S.W., Minor Children,

S.M.W.-S., Mother,

Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

The mother appeals the juvenile court's termination of her parental rights to two of her children under Iowa Code sections 232.116(1)(c), (f) and (g) (1991). **AFFIRMED.**

R. Allen Corzine of Pieters, Pieters & Corzine, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy A. Sheirbon, Assistant Attorney General, and Steven Halbach, Assistant County Attorney, for appellee.

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

SCHLEGEL, J. 990650

The mother appeals the juvenile court's termination of her parental rights to two of her children under Iowa Code sections 232.116(1)(c), (f), and (g) (1991). She contends the court erred in: (1) using termination of her parental rights over another child as a basis for terminating her rights over these children; and (2) ruling that clear and convincing evidence supported termination under sections 232.116(1)(c) and (g). Finally, she maintains her trial counsel rendered ineffective assistance.

S.M.W.-S. had been pregnant ten times and had given birth to seven children by age twenty-five when the hearing on this matter occurred. This appeal involves the termination of her parental rights over her fourth and fifth children, T.S.W. and T.D.W. S.M.W.-S. was adjudicated CINA herself in 1980 and in 1981 was placed in a juvenile home after running away and giving birth to her first child at the age of fourteen. She agreed to the termination of her rights over this child.

After leaving the juvenile home, she gave birth to T.W., her second child, in 1985. Her third child was born in 1986 but died from SIDS. Her fourth child, T.S.W., was born November 7, 1988. In December 1988 T.W. and T.S.W. were taken from their mother's custody after S.M.W.-S. brought her children to the hospital when she had a blood alcohol level of .212. The children were adjudicated CINA and were temporarily placed with the mother's close friend

while the mother attended an inpatient substance abuse program. In April of 1989 the children were returned to the mother's care along with the following court-ordered services: parenting program, substance abuse aftercare program, individual counseling, and family-centered services.

In the months that followed every service provider reported sporadic and insufficient attendance by the mother with regard to: (1) keeping the children's doctor appointments and following recommendations regarding T.S.W.'s apnea monitor; (2) failing to participate in alcohol aftercare treatment and continuing to consume alcohol despite being pregnant again; and (3) failing to attend psychiatric counseling or parenting classes.

On October 2, 1989, S.M.W.-S. gave birth to her fifth child, T.D.W. In January 1990 S.M.W.-S. checked herself into a psychiatric unit. She was released five days later on the recommendation that she attend a hospital outpatient program, attend Alcoholics Anonymous, and take medication. She failed to follow any of these recommendations.

In May of 1990 T.S.W. was hospitalized due to a severe burn on her foot when she was left unattended and crawled into scalding hot bath water. In June of 1990 S.M.W.-S. gave birth to A.W., her sixth child. A.W. weighed only one pound, eight ounces at birth and remained hospitalized several months.

T.D.W. and A.W. were adjudicated CINA on October 26, 1990, under Iowa Code sections 232.2(6)(b), (c)(2), and (g). A.W. was still hospitalized. The court noted: (1) both children had special medical needs; (2) S.M.W.-S. was chemically dependent; and (3) S.M.W.-S.'s continued abuse of alcohol had resulted in the denial of medical care to T.D.W.

After a review hearing concerning T.W., T.S.W., T.D.W., and A.W. in December 1990, the court noted S.M.W.-S. was without housing and found evidence of her unstable psychiatric condition. The three younger children remained in foster care, and T.W. was returned to S.M.W.-S. under close supervision. A.W. needed twenty-four-hour intensive medical supervision when she was discharged. She went directly from the hospital to foster care and has never been in S.M.W.-S.'s custody.

In July of 1992 the State filed a termination of parental rights petition regarding T.S.W. and T.D.W. A petition to terminate parental rights over A.W. had been filed in March, and hearings on the two petitions were consolidated. On the first day of the hearing, September 2, 1992, S.M.W.-S. stipulated to the termination of her parental rights over A.W. The State argues S.M.W.-S. agreed to termination of her parental rights as early as April 1992, although the termination order was not entered until this date. The hearing continued on September 3 and 9. The court issued an order terminating

S.M.W.-S.'s parental rights over T.S.W. and T.D.W. under Iowa Code sections 232.116(1)(c), (f), and (g). S.M.W.-S. appeals.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (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 Dameron, 306 N.W.2d at 745).

Having carefully reviewed the record in the present case in light of these guiding principles, we affirm the juvenile court's termination of S.M.W.-S.'s parental rights to her children, T.S.W. and T.D.W. Clear and convincing evidence exists in the record to support termination in accordance with Iowa Code section 232.116(1)(c) (1991). This section provides:

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> . . . [T]he court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
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> c. The court finds that both of the following have occurred:
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> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Both T.S.W. and T.D.W. have been adjudicated children in need of assistance under Iowa Code sections 232.2(6)(b) and (c)(2) (1989) on the grounds the children had been physically abused or neglected or were imminently likely to be so treated. In addition, the children had suffered or were likely to suffer harmful effects as a result of their parents' failure to exercise a reasonable degree of care or supervision. Accordingly, the first prong of section 232.116(1)(c) above has clearly been met, and the mother does not contest this finding.

The mother does contend, however, that the State has failed to prove the conditions of the second prong above by clear and convincing evidence. Specifically, the mother argues the State failed to prove that the circumstances which led to the CINA adjudications of T.S.W. and T.D.W.

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continued to exist at the time of the termination hearing.

We disagree. The juvenile court's termination order reviews, at length, the numerous services offered and/or received by the mother since the CINA adjudications of these children. The mother has consistently been offered individual services to assist her in dealing with such problems as the deaths of close family members, her past sexual abuse, her ongoing depression, and her abuse of alcohol (especially when pregnant). Such services have either been refused by the mother as being unnecessary or have been utilized by her only sporadically and only during crisis periods, such as the one that led to hospitalization as recently as June of 1992.

The persons who have worked with the mother on parenting skills have seen no improvement in the mother's willingness or ability to properly supervise toddlers such as the children involved here. By her own admission, the mother acknowledges she has "an attitude" and resents anyone telling her how to parent her own children. This fact is apparent from the record which is replete with evidence of the mother's complete failure to accept responsibility for her current plight by accepting help from others. She has refused to take advantage of the countless attempts to help her get her own life in order so that she may concentrate her efforts on improving her parenting skills.

The mother contends her circumstances have changed since the review hearing in December of 1991. The record does not support this contention. In April of 1992 the mother voluntarily admitted herself into a thirty-day in-patient substance abuse program. However, she checked herself out again the very next day. On June 27, 1992, the mother requested a doctor to admit her into a hospital due to her depression and abuse of alcohol. Upon admission, she was found to have a blood alcohol content of .174. Once again, however, she allowed herself to be hospitalized only overnight and sought release the following day.

She further contends her new marriage since December of 1991 has provided her with stability and assistance in caring for the children. The mother was remarried on July 27, 1992. This relationship has involved domestic abuse. A serious verbal argument occurred between the mother and her fiancee in May of 1992. In June of 1992 the mother suffered bruises on her face resulting from an altercation with the man who is now her husband. On June 26, 1992, the mother refused to tell her fiancee about the pending termination action because of her fear of his reaction.

The mother sees nothing wrong with continuing to consume alcohol, and she does not intend to change her present course of consumption of alcohol--even during pregnancy or during periods when she is responsible for the care and supervision of small children. She admits that

she drinks during stressful situations, but she denies her intoxication. Termination of parental rights is appropriate where a parent's substance abuse problem prevents the parent from exercising those parenting skills necessary to assure her children's safety where the possibility of the problem being corrected in the near future is remote. In re D.E.D., 476 N.W.2d 737, 738 (Iowa App. 1991). Children need not endlessly await the maturity of their natural parents. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983) (citing In re Kester, 228 N.W.2d 107, 110-11 (Iowa 1975)).

We agree with the juvenile court's finding that the presence of a newborn baby in the home, together with T.W. and a new and struggling marital relationship, will continue to result in stress for S.M.W.-S., the mother. In the past such stress has resulted in the mother's abuse of alcohol and denial of adequate care to the children. Evidence of a parent's past performance may be examined by the court when assessing the quality of future care the parent will provide to the child if the child is returned to that parent. In re Dameron, 306 N.W.2d at 745.

Any further attempts to rehabilitate the mother or to arrange visitation between her and the children would not remedy the mother's ongoing problems. The evidence clearly indicates that the circumstances which led to the CINA adjudications of T.S.W. and T.D.W. continue to exist despite the offer and/or receipt of numerous services to

the mother. Termination of S.M.W.-S.'s parental rights to these children is warranted under section 232.116(1)(c).

Having reached this decision, consideration of the remainder of the issues raised by the appellant mother is unnecessary. We affirm the juvenile court's order terminating S.M.W.-S.'s parental rights to T.S.W. and T.D.W.

AFFIRMED.