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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTERESTS OF B.H., S.H., and T.H., Children;

S.H., Natural Mother, and P.H., Natural Father,

Appellants.

5-226
84-1259

Appeal from the Iowa District Court for Harrison County - G. T. Reilly, Judge.

The natural parents of three children appeal from the juvenile court order terminating their parental rights pursuant to Iowa Code section 232.116(5) (1983). AFFIRMED.

Edward W. Bjornstad of Larson, Childs, Hall & Bjornstad, Harlan, for appellant natural mother.

Mayer Kanter of Forker & Kanter, Sioux City, for appellant natural father.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

The natural parents of three children have asked this court to consider whether there is sufficient evidence to warrant termination of their parental rights. We affirm the juvenile court's determination.

S.H. and P.H. were married in early 1978 and separated three years later. Their three children continued to live with S.H. In October 1981, the children were removed from their mother's home and placed in temporary foster care. A social worker had found S.H. intoxicated, the children filthy, and the home littered with garbage and rotting food and smelling of urine. That month S.H. entered into a case plan requiring her to inter alia clean the house, attend parenting classes, register with Job Service, provide food and clothing "for the children to return to," and provide the social worker with an address at which she could be reached. The case plan also required P.H., the children's father, to cooperate with social services and set up visitation.

In November 1981, the children were adjudicated in need of assistance and foster care was ordered continued. At the dispositional hearing, the court approved the case plan entered into by the mother and the Department of Social Services. Upon recommendation of the department, visitation was allowed in a controlled setting every other week provided five-day advance notice was given.

Prior to termination proceedings, the matter was reviewed by the court on two separate occasions. Following each hearing, the court determined it was in the best interests of the three children to remain in foster care. In January 1984, the State of Iowa filed a petition to terminate the parental rights of both parents pursuant to Iowa Code section 232.116(5); the grounds were that the children had been adjudicated in need of assistance, had been out of their parents' care for at least twelve months, and could not be returned.

The evidence at trial indicated that some of the children were experiencing emotional problems. The mother's visits with the children were sporadic and there

was little interaction. A report from the Department of Social Services noted her inability to keep their attention at these visits and indicated that the visits were fulfilling only the needs of the mother, not those of the children. The record also indicates that S.H. had a fourth child and was pregnant with a fifth. Marilyn Pruitt, a social worker, testified that the Florence Crittendon Home was "not really" satisfied with the mother's progress and expressed her concern over the mother's ability to handle five children.

With respect to the father, it is apparent that he had not been paying any child support and had only visited the children once between April 1982 and January 1984. For part of that time period he was in Texas in jail; currently he is living with and being supported by a girlfriend.

The juvenile court terminated the parental rights of S.H. and P.H.; both parents have appealed.

Our review of this action is de novo. Iowa R. App. P. 4. It is our duty to review the facts and adjudicate rights anew on propositions properly preserved and presented to us. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984). We accord weight to the fact findings of the juvenile court although we are not bound by them. Iowa R. App. P. 14(f)(7). As always, our paramount concern is the best interests of the child. In re T.D.H., 344 N.W.2d 268, 270 (Iowa App. 1983). In this regard, we look to the child's long-range as well as immediate interests. In re W.G., 349 N.W.2d at 492. The supreme court has recognized that insight for this determination can be gained from evidence of a parent's past performance. "[T]hat performance is indicative of the quality of the future care that parent is capable of providing." Id. (quoting In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981)).

Our careful review of the record convinces us that the termination order should be affirmed with respect to both parents.

Although S.H. has expressed her love for her children and her desire to eventually have custody, the record reveals that after over two years of

assistance from health professionals and social service workers she is still not capable of providing the children with a suitable environment. We simply cannot ask the children to continue to wait for their mother to demonstrate her maturity and ability to look after their needs. In re C.W., 342 N.W.2d 885, 889 (1983). If these children are going to have any chance to overcome their emotional problems, a custody determination must be made now, not at some uncertain date in the future.

S.H. argues that the court erred in failing to return her children after the first review hearing in April 1982 when it found that she had substantially complied with the terms of the case plan. It is further claimed since that time additional terms have been imposed creating "an artificial hurdle for the natural mother and one in which she was doomed to fail."

Initially, we point out that compliance with a case plan does not automatically result in a parent regaining custody. There is not a "contract relationship between the State and the parent; where after a CHINA adjudication a case plan is presented, and if the parent gets a passing score the children are returned." In re M.H., ____ N.W.2d ____, ____ (Iowa Ct. App. 1985). While S.H.'s compliance with the case plan undoubtedly shows some improvement, the evidence still indicates that the mother is incapable of changing her behavior in time for these children.

We also fail to see how the additional terms imposed by the court can be characterized as an "artificial hurdle" which is impossible to overcome. After the first review hearing, the court ordered S.H. to continue counseling, attend Al-Anon, and increase visitations. After the second hearing the court stated that the mother "must demonstrate the ability to initiate constructive visitations with the children in interest by developing a mature and constructive relationship with the foster parents and initiating a regular schedule of visitations with the children in order to develop a relationship with them." Contrary to the mother's assertions,

we do not believe these requirements are excessive or unreasonable; nor do we believe the initial terms of visitation imposed are unnecessarily restrictive. The three children in this case were removed from conditions which can only be described as evidencing gross neglect. Certainly it is not too much to ask that the mother take some initiative in developing a positive relationship with her children and improving her lifestyle.

Finding no error, we conclude that S.H.'s parental rights were properly terminated. We also reach the same conclusion with respect to the children's father. P.H. has shown little interest in his children. He has never provided them with a home or developed a parental relationship with them. As the State points out, during the period in which he could have proved himself a capable parent, he did not support them, failed to cooperate with the Department of Social Services, and did not even remain in the area. Additionally, he did not visit the children from March 1982 until January 1984. It would hardly be in the children's best interests to return them to a person who for all practical purposes has abandoned them.

Accordingly, we conclude that clear and convincing evidence supports the juvenile court's determination that parental rights should be terminated. The decision is affirmed in all respects.

AFFIRMED.