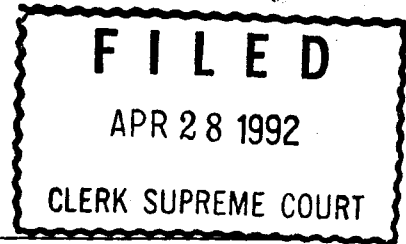


IN THE COURT OF APPEALS OF IOWA

1102

No. 2-110 / 91-1869

IN THE INTEREST OF M.Y., A Child,
K.R., Mother,
Appellant.



Appeal from the Iowa District Court for Wapello County,
Gene W. Glenn, Juvenile Referee, and James P. Rielly,
Judge.

The mother appeals from the termination of her parental
rights. **AFFIRMED.**

Michelle Hoyt Swanstrom, Ottumwa, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; and Judy Sheirbon,
Assistant Attorney General, for appellee State.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

DONIELSON, P.J.

M.Y. is a three-year-old child who was born with and still suffers from severe health problems. She is blind in one eye, has only limited vision in the other, and requires extensive medical services. She requires oxygen and mist treatment for her respiratory ailments. She also requires special feeding procedures and apnea monitoring. In addition, M.Y. is approximately a year behind developmentally and requires close supervision, nurturing, and close contact with physicians and school personnel.

Complicating the situation, her father is intellectually low functioning, and her mother has been diagnosed with cerebral palsy and an adjustment disorder with depressed mood. Her father and mother live together but are not married.

M.Y. was born three months premature weighing only one pound, six and one-half ounces. Her lungs were severely underdeveloped, and she required surgery on her heart and eyes. She remained in the hospital for over five months and weighed only seven pounds upon discharge. Services were provided to M.Y.'s parents when she was discharged from the hospital. These services were designed to help M.Y.'s parents properly care for her. However, M.Y. needed to be hospitalized on six subsequent occasions. Her condition on one such occasion required that a feeding tube be inserted.

On December 12, 1989, the State filed a child in need of assistance petition regarding M.Y. pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(e). Six days later, M.Y. was taken to the hospital after an in-home health provider found she had lost a significant amount of weight and her apnea monitor was not being used. The in-home health care provider testified that M.Y. was completely soaked with urine and feces the parents failed to purchase the proper medication and formula or take M.Y. to her doctor's appointments. She also stated the windows in the parents' house were broken causing the house to be very cold. She never saw the parents feed M.Y. or show her any affection or attention. The DHS caseworker observed the child was not being fed properly, she was not being provided with her oxygen, and the parents were smoking and allowing others to smoke in the child's company. M.Y.'s physician diagnosed her condition as failure to thrive and noted her medical, nutritional and hygiene needs had been neglected. Her physician determined M.Y.'s failure to thrive was due to inadequate parental stimulation and insufficient caloric intake. The physician determined M.Y.'s condition warranted intervention and removal of the child.

On December 22, 1989, a juvenile court referee found M.Y.'s life and health would be at imminent risk were she not removed from her parents' home. Accordingly, the referee issued an interim order placing M.Y. in the

temporary custody of the DHS. A week later, following a hearing, the juvenile court referee adjudicated M.Y. to be a child in need of assistance, finding M.Y. would likely suffer harmful effects as a result of her parents' failure to exercise a reasonable degree of care in supervising her. The referee found M.Y.'s parents were unwilling or unable to provide her with the medical care she needed. Custody of M.Y. was granted to the DHS, and the parents were ordered to undergo psychiatric evaluations. In March 1990 a dispositional hearing was held, and the juvenile court referee found M.Y. could not be returned home.

In September 1990, following a review hearing, the juvenile court referee found the parents had not benefitted from the services provided and ordered the DHS to file a petition for termination of parental rights. Less than a month later the State filed a petition for termination of parental rights.

On August 30, 1991, following an adjudicatory hearing, the juvenile court referee found Melissa could not be returned to her parents. The referee found the parents had been provided extensive services to improve their parenting skills, but the services had not alleviated the problems. Based upon these findings, the court concluded the best interest of the child required the parental rights of her mother and father be terminated.

Both parents filed an application for judicial review, and the court affirmed the findings and orders of the juvenile court referee. Only the mother 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 juvenile court's factual findings, 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).

I. Sufficiency of the Evidence. The juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(g) (1991). The mother concedes all the statutory grounds have been met except for subsection (4) which necessitates a finding the child cannot be returned to the custody of the child's parents at the time

of the hearing. A child cannot be returned to the custody of his or her parents, within the meaning of section 232.116(1)(g), when any one of the grounds listed in section 232.2(6)(child in need of assistance) could be proven by clear and convincing evidence. See e.g., In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988). The mother argues the State has not proven this requirement by clear and convincing evidence. We disagree.

M.Y.'s medical condition requires that her caretakers possess special skills to care for her. After almost a year and a half of instruction, the mother has not obtained these necessary skills. The mother remains unable even to feed M.Y. While she can do so if supervised and prompted, she cannot and will not do it on her own. Neither will she feed M.Y. by mouth without being prompted. The father is likewise unable to feed the child. He testified that further services were needed before M.Y. could be returned, and he has not appealed the termination of his parental rights. The parents are unable to keep regular doctor's appointments for M.Y. and do not properly administer M.Y.'s mist treatments or apnea monitoring. Finally, the parents do not provide M.Y. with the stimulation necessary for her improvement. Additional parenting classes and services would prove futile. The caseworker testified the parents simply did not have the potential for further progress in improving their skills.

The visiting nurses, protective day care and homemaker services, all provided by the DHS to help care for M.Y., have proven inadequate as well. Despite the provision of these services, M.Y. had to be removed from the home and hospitalized on numerous occasions. We find the record contains clear and convincing evidence that if M.Y. were returned to her parents' home she would once again be a child in need of assistance under Iowa Code section 232.2(6)(b),(c)(2), and (e) (1991).

II. Due Process. As her second assignment of error, the mother asserts her due process rights have been violated. Nevertheless, she makes no coherent argument in support of this contention. Nothing in the record before us indicates the mother has been denied due process of law.

III. The Child's Best Interest. Finally, the mother contends the State failed to meet its burden of showing by clear and convincing evidence that M.Y. would be adopted. This argument is without merit.

We believe the court's order terminating the mother's parental rights was in M.Y.'s best interest. While M.Y. recognizes her mother, she does not have a parent-child bond with her. The progress M.Y. has made in her foster home demonstrates her medical needs can be met in a home setting and she can thrive in a nurturing environment where she is properly supervised. At the time of the hearing a

family interested in adopting M.Y. had already been located by the DHS.

The costs of this appeal are taxed to the appellant.

For all the reasons stated, the judgment of the juvenile court is affirmed.

AFFIRMED.