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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-457 / 93-819

IN THE INTEREST OF K.R.H. and K.M.H., Minor Children,

D.S.H., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The natural mother appeals the district court's judgment terminating her parental rights to her twin sons. **AFFIRMED.**

Barbara Durden Romar, Des Moines, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Marcia Schober, Assistant County Attorney, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

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SCHLEGEL, J.

The natural mother appeals the district court's judgment terminating her parental rights to her twin sons.[1] She contends the State failed to prove by clear and convincing evidence that the boys could not be returned to her care.

Debra H. is the natural mother of two twin boys, Kevin and Kristopher, born November 26, 1989. Debra had been in contact with social services prior to the birth of the twins. She was evaluated by Broadlawns Medical Center mental health professionals as having an IQ of 73, the bottom of the borderline range for intellectual functioning. According to the report, Debra needed intensive, repetitive instruction concerning basic living skills.

On February 22, 1990, the Iowa Department of Human Services (DHS) filed a CINA petition on behalf of Kevin and Kristopher, alleging they were in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (1989). According to the petition, Kevin was brought into the hospital by Debra with his leg red and swollen. The petition noted that Debra could not explain the occurrence of this injury. The petition also stated that Debra demonstrated few life skills for herself or

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1. The natural father voluntarily consented to the termination of his parental rights to these children at the commencement of the termination hearing.

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parenting skills, and that she needed intensive supervision. The children were placed in foster care, and Debra was provided services through the Parent Infant Nurturing Center. Debra also moved to Crest Supported Living, a program to assist mentally disabled adults in becoming self-sufficient.

In September 1990 the DHS determined Debra would never be able to parent her children on her own. The DHS determined the children and Debra would have to be placed in foster care as a group. In November 1990 Debra's aunt and uncle, Ralph and Donna M., agreed to take temporary custody of the boys and to permit Debra to live in their home. During this period of time Debra made significant progress toward developing adequate personal and parenting skills. A caseworker reported Debra had become more involved in the daily lives of the children and appeared more dedicated to their nurturing. The boys appeared to have made significant progress in their social development and appeared to be responding swiftly to the stable home environment.

DHS recommended that Ralph and Donna be given permanent custody of the children, but also declined to file a petition to terminate Debra's parental rights. In addition, the DHS requested that it be relieved of the responsibility of attempting to reunite Debra with her children since the DHS did not believe Debra would ever be able to parent the children on her own.

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A permanency hearing was held on January 22, 1992. The district court found the parties were in agreement that the goal of unifying the children with Debra was no longer feasible. The district court determined the best interests of the children would be served if the children remained with Ralph and Donna. During this period, Debra's attempts to comply with social services began to deteriorate precipitously. On August 1, 1992, Ralph and Donna asked Debra to move out of their home. At this time, Debra was granted a one-hour supervised visit with the children each week.

Another review hearing was held on January 6, 1993. All parties agreed the children were still in need of assistance and that custody should remain with Ralph and Donna. The DHS filed a petition to terminate Debra's parental rights. Pursuant to Iowa Code section 232.116(1)(g) (1991), the district court terminated Debra's parental rights. The court found that despite several years of intensive services and Debra's efforts, she could not care for her children without intensive supervision. Debra appeals. We affirm.

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.

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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).

In order to terminate parental rights pursuant to Iowa Code section 232.116(1)(g), the State must prove the following four factors by clear and convincing evidence:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Id. The district court granted the State's motion for summary judgment regarding the first three elements of this section. Debra has not contested the granting of the motion. We must determine whether the forth element has been met.

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> Our court has specifically held this subsection is met "when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code § 232.2(6), exist." In re M.L.W., 461 N.W.2d 609, 611 (Iowa App. 1990)(citing In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988)).

In re A.L., 492 N.W.2d 198, 202 (Iowa App. 1992).

Having carefully studied the record, we agree with the district court's finding that "[t]he unmistakable conclusion of the evidence is that these children cannot be returned safely to the custody of their mother." See Iowa Code § 232.2(6)(c)(2) (1991). Proof by clear and convincing evidence that any one of the types of harm enumerated in section 232.2(6) exists at the time of the termination hearing is sufficient to support termination. In re A.M.S., 419 N.W.2d at 725.

While mental disability, standing alone, is not a sufficient reason for the termination of the parent-child relationship, it is a contributing factor to the inability to perform the duties of a parent. In re T.O., 470 N.W.2d 8, 11 (Iowa 1991).

> [Debra's] mental disability is a proper factor for this court to consider in determining whether these children have been, and will be, neglected to the point where their interest and welfare require termination. . . . Termination [is] appropriate when the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. Further, Iowa Code section 232.116(2)(a) states that in considering a termination of parental rights such consideration may include whether the parent's ability to provide for the child's needs is affected by the parent's mental capacity or mental condition.

Id.

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We are wholly sympathetic to Debra's circumstances which, despite her best efforts, prevent her from providing the care these children require. However, we are obligated to attend to the best interests of the children. Regrettably, the circumstances of this case dictate the termination of Debra's parental rights to Kevin and Kristopher. Accordingly, we affirm the district court's termination of Debra's parental rights to these children.

AFFIRMED.

Donielson, P.J., concurs; Sackett, J., specially concurs without opinion.