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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-738 / 95-1369

IN THE INTEREST OF L.D., A Minor Child,

K.J.D., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Court Judge.

The mother of a minor child appeals a district court order terminating her parental rights. **AFFIRMED.**

Martha L. Johnson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Ray Blase, Assistant County Attorney, for appellee State.

Kathy Goudy, Des Moines, guardian ad litem for minor child.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HAYDEN, P.J.

L.D. was born on October 1, 1993, to K.J.D. On June 7, 1994, K.J.D. went to the Altoona Police Department to file a complaint. K.J.D. alleged there were persons in her home hiding in the box spring of her bed and touching her while she slept. While transporting the mother and child to the police station, one of the officers noticed K.J.D. was holding L.D. on her lap and trying to give her a bottle. When L.D. started crying, K.J.D. held the child tighter and bounced her harder. According to the officer, K.J.D. eventually stated, "I don't want you anymore," and threw L.D. down onto the back seat of the patrol car. K.J.D. picked L.D. back up quickly and forcefully shook and bounced L.D. She started screaming at the child to shut up. One of the officers immediately took L.D. away from K.J.D. When K.J.D. was interviewed, she denied having shaken or struck L.D. and denied having any psychological problems. K.J.D. was charged with child endangerment and taken to jail. L.D. was placed in foster care.

A CINA petition was filed on L.D.'s behalf on June 9, 1994, and L.D. was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(n) (1993) on August 26, 1994. L.D. remained in foster care. The State ultimately filed a petition for termination of K.J.D.'s parental rights, and the district court ordered her parental rights be terminated. K.J.D. has appealed. K.J.D. argues termination of her parental rights under Iowa Code section 232.116(1)(d) was improper because there was not clear and convincing evidence she failed to maintain

significant and meaningful contact with L D Additionally, she argues termination of her parental rights under 232.116(1)(g) was improper because there was not clear and convincing evidence the child could not be returned to her custody.

I. Standard of Review.

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).

II. Termination of K.J.D.'s Parental Rights.

Children should not be forced to endless suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). "The legislature has determined

the interval for which patience with parents may last. This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re C.D.*, 524 N.W.2d 432, 435 (Iowa 1994). To continue to keep children in temporary foster homes is not in their best interests. *In re. J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983).

With the above principles in mind, we conclude termination of K.J.D.'s parental rights was appropriate under both Iowa Code section 232.116(d) and 232.116(1)(g) (1995). With respect to section 232.116(d), termination of parental rights is permitted when the following has occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

L.D. was adjudicated CINA pursuant to section 232.96 on August 26, 1994, and she had been in the custody of DHS for at least six consecutive months.

Since we have determined two of the three subsections in 232.116(d) have been met, we now address whether clear and convincing evidence indicates K.J.D. failed to

maintain significant and meaningful contact. We find such evidence is present. According to Iowa Code section 232.116(d), "Significant and meaningful contact:"

> [I]ncludes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life."

Iowa Code § 32.116(1)(d)(3) (1995). K.J.D. has participated in weekly visits with L.D. ever since the no-contact order was lifted in September 1994. As the district court noted, however, K.J.D. has not provided her child with emotional or financial support since the child entered foster care on June 7, 1994. Case workers indicated there was little interaction between K.J.D. and L.D. during visitations and K.J.D. mostly acted nonverbally with the child. L.D.'s response to visits with K.J.D. is one of distress. L.D. frequently cries and is fussy throughout visits. She does not appear comfortable with K.J.D. and is not bonded to her. In fact, L.D. responds to K.J.D. in much the same way as she does with an unfamiliar person. As such, we determine K.J.D. failed to maintain meaningful and significant contact with L.D.

Second, we determine termination of K.J.D.'s parental rights was also appropriate under Iowa Code section 232.116(g). Section 232.116(g) permits termination of parental rights when the following has occurred:

(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 child has been removed from the physical custody of the child's parents 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.

L.D. was three years of age or younger at the time of the hearing, she was adjudicated CINA pursuant to Iowa Code section 232.96 on August 26, 1994, and she has been in the custody of DHS since June 7, 1994.

As we have determined three of the four subsections in section 232.116(g) have been met, we now address whether clear and convincing evidence indicates the child cannot be returned to K.J.D.'s custody. We find such evidence is present. If L.D. was returned to her mother's custody and care, L.D. would be in imminent danger of harm. PINC staff concluded K.J.D. could not parent L.D. on her own. Her parenting skills are weak. K.J.D. is unable to foresee potential harms to the child and does not know the basics on how to parent this child. For instance, K.J.D. has a difficult time initiating care for L.D. She cannot consistently follow through on feeding, changing, and caring for L.D. Reports indicate K.J.D. needs constant prompting to feed L.D., change her diaper, and monitor L.D.'s movements so she is not in danger. K.J.D. has physical difficulty lifting and helping to stabilize L.D. when she is moving about the house. She also has a tendency to use corporal forms of punishment. Reports also

express concern about K.J.D.'s history of mental illness and self-abusive behavior. A parenting evaluation concluded K.J.D. suffers from schizophrenia and avoidant personality disorders. Although K.J.D. began individual counseling, it proved unsuccessful because she refused to admit she had any problems or mental health issues to discuss in therapy. As such, we determine L.D. cannot be returned to K.J.D.'s custody.

Although K.J.D. has attempted to cooperate and participate in the services offered to her by DHS, K.J.D. is still not capable of parenting this child. We determine there is clear and convincing evidence justifying termination of K.J.D.'s parental rights, and termination is in the best interest of the child.

AFFIRMED.

Huitink, J., concurs; Sackett, J., concurs specially without opinion.