FILED
JAN 26 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF H.C., Minor Child.

P.C., Natural Mother,

Appellant.

24

8-592
88-836

Appeal from the Iowa District Court for Dubuque County (Juvenile No. 102345), Charles H. Jacobs, Juvenile Referee.

The mother of a child appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Jean Becker, Assistant Dubuque County Attorney, for appellee State.

Arthur F. Gilloon of Norman, Gilloon & Wright, Dubuque, guardian ad litem for the child.

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

PER CURIAM 25

The natural mother of the child in question appeals the district court's order terminating her parental rights. She asserts the court erred in finding there was clear and convincing evidence that the child, H.C., could not be returned to her custody. We affirm.

H.C. was born on September 2, 1978. He is presently ten years old and functions emotionally and mentally at a low level. Because of this disability, he is a child with special needs. On June 11, 1981, he was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(5)(e) (1981) because the child was in need of medical assistance and the parents failed to provide the necessary treatment. He remained in foster care until 1983, when he was returned to his parents' custody. H.C. was subsequently placed again in foster care on March 12, 1987, because his personal hygiene and nutritional requirements were not being met by his parents. Additionally, his father's alcoholism, family budget difficulties, and filthy home environment were concerns voiced by the court.

H.C. began to thrive in this new environment. His self esteem improved because he was able to bathe frequently, have clean clothes, and eat well-balanced meals. There was testimony that the child was being monitored for malnutrition prior to his placement in foster care. He became more self-sufficient and interacted well with his

peers. His only difficulties during this time were after visits with his parents. He began having urinary and bowel problems which were subsequently managed after visitation was terminated. The evidence reflects the fact that while both parents care for H.C., there exists a limited parent-child relationship. P.C., mother of H.C., is handicapped emotionally and mentally as well. She has much difficulty caring for herself and has little capacity to care for H.C.

The juvenile referee terminated the parents' parental rights in H.C. on May 20, 1988, pursuant to Iowa Code section 232.116(1)(e) (1987). The father did not appeal.

Appellate review of proceedings to terminate a parent-child relationship is de novo--the reviewing court may review the facts as well as the law and adjudicate the parents' rights anew. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). However, weight is to be accorded the findings of the juvenile court, particularly as regards the credibility of witnesses. Id.

Parental rights may be terminated if:

> e. The court find[s] that all of the following have 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 for at least twelve of the last eighteen months.
>
> (3) 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.

Iowa Code § 232.116(1)(e) (Supp. 1987). The mother concedes the first two prongs of this test have been met.

Central to a determination of this nature are the best interest of the child. Dameron, 306 N.W.2d at 745. Those best interests are to be determined by looking at the child's long-range as well as immediate interests. Id. The court is to consider what the future likely holds for the child if that child is returned to his or her parents. Id. Insight of that determination is to be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. Id. Case history records are entitled to much probative force when a parent's record is being examined. Harter v. State, 149 N.W.2d 827, 829 (Iowa 1967).

The Iowa Supreme Court (as we have) often recognized "that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but rather may be forfeited by certain parental conduct." Dameron, 306 N.W.2d at 745. The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. Id. The termination statutes are preventative as well as remedial. Id. Under those statutes, the State must act to

23

prevent probable harm to a child and need not delay until harm has actually occurred. Id.

Termination may occur under the statute where there is clear and convincing evidence that the child has been in foster care for twelve months and would probably suffer harm if returned home. Iowa Code § 232.116(1)(e) (Supp. 1987); In re Interest of Chad, 318 N.W.2d 213 (Iowa 1982). The child should not be forced to endlessly suffer the parentless limbo of foster care, Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977); nor should the child have to endlessly await the maturity of his or her natural parent. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if enough time (twelve to eighteen months) has passed and the parent still cannot take care of the child. Id. The trial court terminated the parental rights here some seven years after the child was adjudicated to be in need of assistance.

Iowa Code section 232.102(4)(b) (1987) states that custody will not be transferred back to the parents if the child cannot be protected from some harm. There exists clear and convincing evidence that H.C. was suffering emotionally and physically while under his mother's care. The Department of Human Services provided many ongoing support services to P.C. to help her learn how to feed, clothe, and care for her young child. She failed to utilize these services. Oftentimes, school staff would

have to intercede to feed, clothe, and bathe H.C. because his mother had neglected to do so.

P.C. cares for her child, but more as a peer than a mother. Consequently, she exhibits virtually no supervisory skills, which has threatened or resulted in physical harm to the child.

Based on this seven-year history, we conclude that if H C were to be returned to his mother, he would suffer extreme neglect. We therefore find that the grounds for terminating parental rights, Iowa Code section 232 116(1)(e) (Supp. 1987), have been met and that the trial court's decision is supported by clear and convincing evidence.

AFFIRMED.

Schlegel and Habhab, JJ., concur; Sackett, J., dissents.

SACKETT, J. (dissenting)

I respectfully dissent.

I do not agree with the majority's decision to terminate the natural mother's parental rights. The natural mother has failed to meet society's expectations for the care of her child because she is of below-average intelligence.

During the ten years of the child's life she has shown interest, love and care for the child. She was cooperative in all respects with human services. She has tried to the best of her ability to be an adequate mother. Her ability to care for her child is understandably limited by her intellectual capacity. Put bluntly, she cannot meet society's expectations for care of her child because she was born without the intelligence to do so. She is mentally handicapped.

The child also has a low IQ and suffers some physical handicaps as well. He is difficult to care for. Both the mother and the child will continue to need special services throughout their lifetimes.

Like the majority, I realize it is our duty to focus on the best interests of the child but, unlike the majority, I cannot determine the best interests of this child are

served by severing his relationship with the person who has loved and cared about him during his ten years of life.

One of the very frustrating factors about examining parental termination is the court generally is not apprised of what will actually happen to the child after termination of parental rights. We do not know what will happen to this child after the mother's rights are terminated. Because of the child's age and his mental and physical handicaps he will be difficult to place for adoption. It was suggested at oral arguments if placed for adoption it would be a subsidized adoption. If the child is not placed for adoption the child will be a ward of the State. The State will in all probability continue to provide financially for the care of this child in some part, even if there is a termination.

In applying statutory directives for termination of parental rights we cannot lose sight of the important factor of the love and bonding between parent and child. Love exists between this mother and this child. The fact that this mother loves and cares for him in the best way she can given her limited abilities are factors that must be given careful consideration.

Because of the mother's handicap and the child's special needs this mother is always going to need help in caring for her child. As a society we have generally recognized the needs of handicapped persons and have

assumed responsibilities to provide for their needs to allow them to function as normally as possible in our society.

I determine the best interests of this child require continuing contact with the mother who has loved him for ten years and offered care to the best of her ability. I would determine the child remain a child in need of assistance Obviously, because of her handicap the mother will require services in order to care for her child.