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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

321

IN THE INTEREST OF W.W.,)
A Minor Child,
)
D.W., Natural Mother, 9-148
) 89-18
Appellant.

Appeal from the Iowa District Court for Jefferson County (Juvenile No. 1194), Gene W. Glenn, Juvenile Referee, and James D. Jenkins, Judge.

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

Myron L. Gookin of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant mother.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Michael R. Brown, County Attorney, for appellee State.

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

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The juvenile court terminated the parental rights of both parents of W.W., and the mother appeals. She contends the termination was erroneous because the juvenile court relied on a statute which had been repealed and replaced by a substantially similar statute. Additionally, she challenges the sufficiency of the evidence to establish that the child cannot safely be returned to her custody. Finally, she contends even if the termination of her parental rights was warranted, the court should not have done so because the termination would be detrimental to the child due to the closeness of the parent-child relationship. We find the mother's arguments without merit and accordingly affirm the decision of the juvenile court.

W.W. was born November 8, 1982. His father, B.W., and mother, D.W., were married in 1976 and currently live together. D.W. had three sons from a previous marriage who lived with her and B.W. In addition to W.W., they have two daughters born in 1976 and 1978.

In 1979, B.W. was convicted of lascivious acts with a child in connection with the sexual abuse of his three stepsons. Two of the boys were subsequently adjudicated children in need of assistance and all three boys were permanently removed from the stepfather's home.

In May 1985, the two daughters were adjudicated children in need of assistance in connection with B.W.'s

sexual abuse of one of the girls. The girls were removed from the home and placed in foster care. Parental rights to the girls were terminated in December 1986.

W.W. was adjudicated a child in need of assistance in December 1985 and placed in his mother's custody, under the protective supervision of the Department of Human Services. The father and mother had been living apart since the CHINA proceedings involving the girls. The court ordered that W.W. participate in day care programs, that the father have visitation with the child only under the supervision of a Department of Human Services case worker, and that both parents participate in counseling.

Both parents left the State of Iowa, taking W.W. with them, in January 1987. In July 1987, the child was located, removed, returned to Iowa, and placed in foster care where he remains. In September 1988, the parental rights of both parents were terminated pursuant to Iowa Code section 232.116(5) (1987).

Appellate review of the proceedings to terminate a parent-child relationship is de novo; thus, it is this court's duty to review the facts as well as the law and adjudicate their rights anew. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by these findings. Id.

> Central to a determination of this nature are the best interests of the child. In this connection we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely 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 that parent is capable of providing.

Id.

I. We will first address the issue of the juvenile court's reliance on Iowa Code section 232.116(5) (1987). Section 232.116 was amended by 1987 Iowa Acts Chapter 159, section 6, and became effective July 1, 1987. See Iowa Code Ann. § 232.116 (Supp. 1988); Iowa Code § 3.7 (1987). The amendment renumbered section 232.116(5) as 232.116(1)(e). The mother contends that the juvenile court erroneously terminated her parental rights pursuant to Iowa Code section 232.116(5) because no such law existed at the time of the proceedings. The mother's position is without merit. Iowa Code section 232.116(5) was only renumbered, not repealed, by the amendment. A statute which is amended is "intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute." Iowa Code § 4.10 (1989).

II. Iowa Code section 232.116(1)(e) (1989) provides the court may order termination of parental rights if the court finds that 1) the child has been adjudicated a child in need of assistance, 2) the custody of the child has been

transferred from the child's parents for at least twelve of the last eighteen months, and 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.

The third requirement of section 232.116(1)(e) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance still exist. In Interest of A.M.S., 419 N.W.2d 723, 725 (Iowa 1988). The definitional grounds pertinent to our determination here are found at Iowa Code section 232.2:

> 6. "Child in need of assistance" means an unmarried child:
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> * * *
>
> b. Whose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.
>
> c. Who has suffered or is imminently likely to suffer harmful effects as a result of:
>
> * * *
>
> (2) The failure of the child's parent . . . . to exercise a reasonable degree of care in supervising the child.

The mother claims there was no clear and convincing evidence that the child could not be returned to the custody of the child's parents. We find there is clear and convincing evidence in the record the child cannot safely be returned home without the risk of harm from sexual abuse.

The record shows that the mother has allowed her husband to sexually abuse her children and has failed to provide for the children's protection. In both instances involving sexual abuse of her children by her husband, she chose the option of having the children leave the home rather than have her husband leave. During the CHINA hearings for her daughters, the mother claimed she lived apart from the father. However, despite a no-contact order between the father and the girls, the mother allowed the father to visit the home during the week and stay at the home during the weekends.

The CHINA proceedings for W.W. arose out of an incident in which the mother allowed her husband to baby-sit W.W. despite knowing his history of sexually abusing four of her children. The CHINA court order in December 1985 ordered the father have visitation with the child only under Department of Human Services supervision. However, the record reflects evidence the father continued to visit the house. In January 1987, the mother secretly removed W.W. from the state and lived with the father until July 1987, when the Department of Human Services found them and removed the child. The mother has demonstrated a continuing unwillingness to protect her children from her husband. She has repeatedly put her relationship with her husband ahead of the safety and well-being of her children. The record is clear that the child cannot be

protected from the harm which justified adjudicating him a child in need of assistance.

The mother maintains that through continuing counseling she is now capable of protecting W.W. and that her husband has changed. Both parents began receiving counseling following their daughters' CHINA adjudication in May 1985. In 1986, they underwent psychological evaluations by the Child Psychiatric Service, University of Iowa Hospitals and Clinics. The mother was diagnosed as having Dependent Personality Disorder. The evaluation noted she had allowed her husband to abuse her children and did not provide for their protection. The report noted it was likely this behavior would continue.

Both parents continued therapy until December 1986. During the months of December 1986 and January 1987, they became uncooperative with the Department of Human Services, and the father did not attend counseling. In January 1987, they moved out of state without authorization. They did not seek counseling again until December 1987, after the child was removed from their home. The father has not attended counseling since December 1986 with the exception of the December 1987 sessions. The mother did not attend counseling until August 1988.

Between April 1985 and December 1986, counselors noted the mother indicating she understood her role in protecting W.W. and that she would implement the parenting skills she

had learned. Department of Human Services workers, however, did not see any progress in the home. Although the mother continues to profess her progress, she has not demonstrated an ability to protect her children from an abusive father. Despite the father not attending ongoing counseling since December 1986, she wishes to unite W.W. with the family unit. We find, based on the entire record, sufficient evidence to terminate her parental rights.

III. The mother argues that even if the court finds clear and convincing evidence that W.W. cannot safely be returned to her custody, the court should not terminate her parental rights because, pursuant to Iowa Code section 232.116(3)(c) (1989), termination would be detrimental to W.W. due to the closeness of the parent-child relationship.

We find this argument without merit. W.W. was removed from the home in July 1987. Since that time the mother has had monthly supervised telephone calls with the child. The only visit occurred in July 1988. The child did not indicate he was especially attached to the mother during the visit. In fact, W.W. spent most of the visit with his back to the mother. We find no clear and convincing evidence in the record to indicate termination would be detrimental to W.W.

The conditions which led to W.W.'s adjudication as a child in need of assistance have not changed. The mother continues to exhibit an unwillingness to do whatever is

necessary to protect W.W. from the possibility of sexual abuse by the father. A 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 endlessly await the maturity of his parents, In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Based on the mother's past performance in failing to protect her children from sexual abuse and her intent to live with the father, we find it is in the best interests of the child to terminate her parental rights. Accordingly, we affirm the juvenile court.

AFFIRMED.