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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF M.F., R.C., and M.C., Minor Children,	)	106
C.C., Natural Mother,	)	8-451 / 88-800
Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (Juvenile No. T-599), Stephen C. Clarke, Juvenile Referee.

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

Mark D. Reed of Douglas V. Coonrad, P.C., Hudson, for appellant mother.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Janet Pederson, Assistant Black Hawk County Attorney, for appellee State.

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

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The mother of three children appeals from the termination of her parental rights. She challenges the sufficiency of the evidence to justify termination. She also contends the termination should be invalidated because the State failed to provide her with needed psychiatric care. In addition, she claims the termination should have been avoided pursuant to Iowa Code section 232.116(3)(c) because termination will be detrimental to the children due to the closeness of the parent-child relationship. Finally, she contends the termination should be invalidated as to the oldest child, who is over ten years of age, because the juvenile court failed to make any finding as to whether that child objected to the termination.

The children in question are two girls, born in February 1977 (M.F.) and November 1979 (R.C.), and a boy born in December 1980 (M.C.). The two younger children are full siblings, and the oldest child has the same mother.

The children lived with their mother and her husband, the father of the two younger children, until 1985. In that year the mother's husband sexually abused the oldest child, his stepdaughter. The oldest child was adjudicated to be a child in need of assistance in December 1985, and the other two children were so adjudicated in February 1986. For a few months, the children were left in the mother's physical care, under State supervision. However,

in the summer of 1986 the mother's new boyfriend sexually abused two of the children. In September 1986, all three children were placed in foster care where they have since remained.

There was evidence that the mother denies the occurrence of sexual abuse, that she continues to show poor judgment in choosing male friends, and that she drinks to excess. Until the children were removed from her custody, she continued to leave them with inappropriate baby-sitters. Social workers testified that the mother has consistently failed to improve her parenting skills in spite of much counseling and instruction. Social workers expressed the view that the mother fails to absorb or process the information imparted to her and fails to integrate such information into her parenting practices. Social workers expressed little hope for improvement in the mother's capacity to supervise the children and protect them from harm.

In December 1987, the State filed the present petition to terminate the parental rights of the mother and of both the fathers of the children. (The father of the oldest child has abandoned her; the father of the other two children is incarcerated for sexually abusing the oldest child.) After a hearing, the juvenile court did terminate the parental rights of the mother and both fathers. Only the mother appeals.

Our review of proceedings to terminate a parent-child relationship is de novo. 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 the court has heard and observed first hand, but we are not bound by them. Id.

The mother's rights in this case were terminated pursuant to Iowa Code section 232.116(1)(e) (Supp. 1987). The court may terminate the parental rights when the court finds 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).

I. The mother first argues that the trial court unnecessarily terminated her parental rights to the minor child over ten years of age because it failed to make a finding that the minor child objected to the termination. Iowa Code section 232.116(3)(b) provides that the court need not terminate the relationship if the child is over ten years of age and objects to the termination. Thus the district court is required to make a finding under section 232.116(3)(b) and failure to do so is grounds for reversal.

We disagree with the mother's interpretation of this statute. Iowa Code section 232.116(3) does not "mandate" against termination if the conditions are alleged. In Interest of L.P., 370 N.W.2d 839, 843 (Iowa App. 1985) (interpreting Iowa Code § 232.116(6) (1983) which remained unchanged until 1987 and was then renumbered as § 232.116(3) (Supp. 1987)). "That section merely provides that 'the court need not terminate' if it makes any of the findings therein specified." L.P., 370 N.W.2d at 843. Both the decision to terminate (Iowa Code § 232.116(1) and (2)) and to decline termination (id. § 232.116(3)) are not mandatory. In Interest of L.P., 370 N.W.2d at 843.

Furthermore, the court is not required to make this finding. The best interests of the child are the "central determination" in a termination case. Id. A child's wishes do not take precedence over her best interests in these matters. Id.

The same reasoning applies to defeat the mother's second argument. She asserts the trial court erred by failing to find that clear and convincing evidence showed that termination of parental rights would be detrimental because of the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). This finding is not mandatory and will not affect our de novo review.

II. The main issue is the sufficiency of the evidence to justify termination. The statute requires clear and

convincing evidence that the child cannot be returned to the custody of the child's parents. Iowa Code § 232.116(1)(e)(3). A child is to be returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm as specified in section 232.2(6).

The harms listed which are relevant to this case are: neglect (Iowa Code § 232.2(6)(b)); lack of supervision (id. § 232.2(6)(c)(2)); and sexual abuse (id. § 232.2(6)(d)). Clear and convincing evidence of any one of these harms is sufficient to support termination. In Interest of K.L.C., 372 N.W.2d 223, 228 (Iowa 1985).

Clear and convincing evidence supports that the children are imminently likely to suffer harm from sexual abuse, neglect, and lack of supervision. The trial court found that the mother received services from the Department of Human Services for more than two and one-half years. Still the mother was and is unable to take responsibility for her own actions and is unable to protect her children from abuse. She has consistently failed to provide for her children's basic needs and has been unable to protect them from abuse by others, including her husband and boyfriend.

The evidence shows that while in their mother's custody, the children suffered several incidences of sexual abuse. M.F. was the victim of sexual abuse on two occasions by both her mother's husband and her boyfriend.

The incidents occurred while the males were living with the family. The incidents with the boyfriend occurred while the Department was involved with the family. M.F. also had sexual intercourse with her brother.

R.C. was also abused by the boyfriend and by two younger juveniles. She was involved in oral sex with her brother, M.C., and another time with M.C. and another boy living with the family.

The stepfather (husband) was sentenced and sent to jail for the sexual abuse of M.F. The mother was requested not to allow contact between the stepfather and children, but she allowed both phone and in-prison visits.

In the summer of 1987, both M.C. and M.F. were sexually abused by the mother's live-in boyfriend. The mother's response was one of disbelief.

At school, the children have been reported as dirty and in dirty, ill-fitting clothes. The children were found not to be eating properly and M.F. often took on the parental role of sending the younger ones off in the morning.

The mother has been provided with numerous services to help her with parenting. She often missed appointments and was uncooperative. She participated in family therapy but had trouble accepting that M.F. had been abused.

After all the services C.C. has received, there is concern she has not been able to utilize the information conveyed to her. Little or no difference in the mother's

behavior has been noticed. She has not demonstrated an ability to meet the children's needs and provide a safe, stable environment for them.

The mother argues that too much emphasis is being placed on her past acts and not enough on her progress. She contends that even though her children may not be returned to her safely today, it is in the children's best interests not to terminate their relationship. Long term foster care would provide her with more time to improve through counseling and contact with the children. She also says termination is wrong because the children have special needs and will not easily be placed in an adoptive home.

Our primary concern is the best interests of the children. We look to the children's long-range, as well as immediate, interests. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). 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. Id. Our statutory termination provisions are preventative as well as remedial. Id. They are designed to prevent probable harm to a child. Id.

There is sufficient evidence to show termination is in the children's best interests. The children have been in foster care for two years already. They should not be forced to endlessly suffer the parentless limbo of foster

care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). Placement only gets harder as the children get older. The children have waited long enough for their mother to mature. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). It is time the children give up their protective motherly role and be allowed to be children and to develop in a more stable environment.

Whether the mother did in fact receive "intensive psychiatric treatment" does not change the result. She did undergo an evaluation. She did receive several different types of services aimed at her problems. She attended individual counseling as well as sessions with her children. Whether the counseling was inadequate, the evidence still points to the fact the mother is incapable of changing her behavior in time for these children. In Interest of M.H., 367 N.W.2d 275 (Iowa App. 1985).

Therefore, we affirm the lower court's decision to terminate the mother's parental rights.

AFFIRMED.