IN THE COURT OF APPEALS OF IOWA

No. 0-112 / 89-1843

IN THE INTEREST OF S.B.,
A Minor Child;

G.B., Natural Mother,

Appellant.

FILED
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CLERK SUPREME COURT

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Appeal from the Iowa District Court for Black Hawk County, Steven C. Clarke, Juvenile Referee.

The natural mother appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Douglas V. Coonrad, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee, the State of Iowa.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

The natural mother of a two-year-old girl appeals from the juvenile court order terminating her parental rights. The mother challenges the sufficiency of the evidence to support termination. We affirm.

Our review of termination proceedings is de novo. In Interest of D.T., 418 N.W.2d 355, 355-56 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Our paramount concern is the welfare and the long-term, as well as immediate, best interests of the child. In Interest of D.T., 435 N.W.2d 323, 329 (Iowa 1989); In Interest of S.V., 401 N.W.2d 201, 202 (Iowa App. 1986).

The child in this case is a girl born August 14, 1987. At the time, the mother had separated from the child's father and was living with her boyfriend. In November 1987 physicians who examined the child discovered a spiral fracture of her left tibia. Because child abuse was suspected, the child was removed from the mother's custody and placed in foster care; she has remained there since. The boyfriend signed a confession that he was the perpetrator of the abuse on the child, but the mother continued to live with him.

In January 1988 the child was adjudicated a child in need of assistance. The mother was offered various

services. In March 1989, a petition for termination of the parental rights of both parents with respect to the child was filed. Trial was held. The evidence indicated, among other things, that the boyfriend has recanted his confession, and that the mother does not believe he abused the child. The evidence also indicated that the mother is still living with the boyfriend. In addition, the evidence established that the child's father consents to termination, and that he acknowledges that he cannot take care of the child.

Following the trial, the juvenile court entered an order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(e) (child in need of assistance who has been transferred from parents' custody for at least twelve months cannot be returned there) and the father's parental rights pursuant to section 232.116(1)(e) and section 232.116(1)(a) (consent). The mother has appealed.

The mother contends the juvenile court erred in finding clear and convincing evidence that her parental rights should be terminated. The mother maintains that the services offered her to help her reunite with her child were inadequate.

Central to a determination of this nature are the long-term, as well as immediate, best interests of the children. In Interest of Dameron, 306 N.W.2d 743, 745

(Iowa 1981). We consider what the future holds for this child if returned to her mother. Id. Essential to the evaluation of a child's best interests is an examination of the parent's past performance, from which valuable insight may be gleaned as to the future quality of care the parent is able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). The past behavior of the parent is an important factor to be considered by the court. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). Iowa statutory termination provisions are preventative as well as remedial. Interest of Dameron, 306 N.W.2d at 745. They are designed to prevent probable harm to a child. Id.

The State must prove by clear and convincing evidence the allegations contained in the termination petition. See In Interest of C.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988), Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 599, 617 (1982). Termination may occur under Iowa Code section 232.116(1)(e) if the juvenile court finds: (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. In Interest of A.C., 415 N.W.2d 609, 612 (Iowa 1987).

The issue in dispute herein concerns whether there is clear and convincing evidence that the child cannot be returned to her mother's custody. This 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, Iowa Code section 232.2(6), exist. In Interest of A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

Upon our review of the record in this case, we believe there is clear and convincing evidence that this child would be in imminent threat of those harms detailed in section 232.2(6) if she were returned to her mother's care. We make this determination after specifically examining the parents' past performance, as it may be indicative of the quality of future care the parents are capable of providing. See O'Neal, 303 N.W.2d at 423.

The record reveals that in November 1987 the child suffered a spiral fracture of the left tibia. The injury occurred while the mother, the child, and the boyfriend were in Texas. The boyfriend signed a confession that he was the perpetrator of the abuse to the child. Medical care for the child's injury was not obtained until nine days later, when they returned to Waterloo, Iowa. Specialists from the University of Iowa examined the radiographs of the child's injury. The specialists stated that an injury such as the type suffered by this child was

an extremely painful and obvious injury. These specialists both agreed that a competent caretaker would have sought immediate medical attention, considering the seriousness of the injury.

In a child abuse report dated November 9, 1988, social worker Sally Oordt states:

> It has been almost, one year since [the child's] . . . removal from the home. It does not appear that [the mother] . . . has made any progress in dealing with the issue of [the boyfriend's] . . . abuse of [the child]. . . . Even after [the boyfriend] . . . failed a polygraph and told [the mother] . . . that he admitted breaking [the child's] . . . leg, [the mother] . . . still believes [the boyfriend] . . . when he tells her that he really didn't do it. [The boyfriend] . . . reported that he and [the mother] . . . plan to be married in February of 1989. This worker questions whether [the mother] . . . will be capable of providing a safe home environment for . . . [the child].

The record further reveals that the mother has been offered various evaluations, family therapy, and parenting classes. The mother has failed to successfully participate in either of the family therapy or parenting classes. The family therapist and other service providers believe the mother has not benefited from the social services she received. In a quarterly progress report dated June 9, 1989, family therapist Susan Hoppenworth states:

> One positive that has occurred during therapy is [the mother's] . . . continued attendance in therapy sessions. However, one-third of the sessions since January 1989, have not occurred due to cancellations or no-shows by . . . [the mother].
>
> In summary, it appears no measurable progress has occurred with the . . . family. This therapist

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believes [the child] . . . could benefit from as much stability as could be offered to her at this young age to reduce any more emotional trauma or upheaval for her. It is not believed [the mother] . . . is in a position currently (or in the near future) to offer [the child] . . . this stability, security or nurturing and provisions for her physical safety and well-being, although this therapist believes [the mother] . . . does have positive feelings for her daughter.

If the court so orders, therapy services will continue with [the mother] . . . and her family. However, it is believed maximum benefits have been reached and no significant amount of progress will be made in the near future.

At trial, Ms. Hoppenworth testified that the mother received all the necessary family therapy and parent skill development her organization provides. On cross-examination she testified as follows:

Q. Okay. Well, given your experience in social work and counseling people and knowing or at least believing that there are learning disabilities involved in this particular case, can you today state to the Court that any attempts, further attempts to help [the mother] . . try to understand these parenting skills and that type of stuff would be useless or unnecessary and that you would actually achieve the maximum results or the maximum benefits of what that individual's capable of?

A. I believe that I approached it the best way I knew how with her in sessions. And I'm aware that there were other opportunities for her to be educated in parenting other than family therapy and the parent skill development that we went through. I believe everything was done that was within reason and was possible and available.

Q. If the Court ordered for the therapy and your organization to continue, what additional things would you do or attempt in order to try to change the course of events?

A. I can't think of anything that we have not tried. It would be a continuation of doing

what we have done since March of 1988. I know of no other ideas that we can use.

We have used a couple different things that aren't normally involved in therapy, and one of them was the use of videotape so the [the mother] . . . could look at the visit between her and [the child] . . . and point out all the good things that occurred and the things that she would like to improve upon. That's something that we don't normally use.

I also used a child development book with [the mother] . . . to get her to learn age-appropriateness for her daughter. I photocopied ideas that I had of simple toys and things that I knew [the mother] . . . was capable of making at home and bring back to visits. We tried a lot of different things with . . . [the mother].

Based upon our examination of the record and the above testimony, we find no merit in the mother's contention that the services offered her to help her reunite with her child were inadequate. We believe adequate services were provided to allow for the return of the child to the mother in this case.

Although the mother's past performance as the caretaker of this child is an important factor in our determination, it is not the sole factor in our analysis of the child's best interests. On direct examination, Ms. Hoppenworth testified about her concerns if the child was returned to her mother. She stated:

I have several concerns about that. One of them would be that it seems that [the mother] needs to devote attention to [the boyfriend] . but would also have to devote attention to . . [the child]. And I believe that the adult relationship is so important to [the mother] . . that [the child] . . . may be the one to be left out.

I'm concerned also about the amount of nurturing and appropriate stimulation that [the child] . . . might receive in the home.

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> I'm also concerned that if she continues to live with [the boyfriend] . . . and [he] . . . continues to be aggressive, I would be concerned for [the child's] . . . . well-being. And I'm not really sure that [the mother] . . . would come to [the child's] . . . aid.
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> Q. Would your concerns change at all if [the child] . . . was placed with just . . . [the mother], and [the boyfriend] . . . was no longer in the picture? Would you still have concerns for [the child's] . . . welfare in . . . [the mother's] sole custody?
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> A. I would still have concerns, but they would be a little different. It would continue to be a concern of whether she could nurture and stimulate [the child] . . . and also being age appropriate with . . . [the child]. That did not occur during sessions, and that was something that we worked very hard on.

The mother argues that she should be allowed to continue with her therapy in an effort to regain custody of her daughter in the future. The Iowa Supreme Court has held a child should not be forced to endlessly suffer the parentless limbo of foster care. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987). Accordingly, we do not believe this child should be forced to suffer indefinitely in parentless limbo. Upon our review of the record, we find clear and convincing evidence this child cannot safely be returned to her mother's custody.

We find sufficient evidence in the record to support the juvenile court's conclusions in all respects. For the above reasons, we affirm the decision of the juvenile court.

AFFIRMED.