

IN THE COURT OF APPEALS OF IOWA

No. 4-037 / 93-1421

FILED

APR 26 1994

CLERK SUPREME COURT

IN THE INTEREST OF B.G., Minor Child,
D.W., Mother,
Appellant.

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

D.W., the mother, appeals an order terminating her
parental rights to B.G. **AFFIRMED.**

F. Montgomery Brown of Cook Gotsdiner, McEnroe, and
McCarthy, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; Judy Sheirbon,
Assistant Attorney General; and Marcia Schober, Assistant
County Attorney, for appellee-State

Susan Conn of Youth Law Center, Des Moines, guardian ad
litem for minor child.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

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DONIELSON, C.J.

Brittany, born January 1989, is the youngest of four children born to Doris. Doris has been diagnosed schizophrenic, has abused illegal drugs for the last seven to eight years, and has a long criminal history. Brittany was exposed to cocaine in utero and has been in her aunt's custody since she was six months old. She was adjudicated CINA in August 1991. The other children also have been adjudicated CINA and are living with relatives.

A petition to terminate Doris's parental rights to Brittany was filed in May 1993. At the time of the hearing in June 1993, Doris had not seen Brittany since December 1992 and was incarcerated on drug offenses. Doris's counsel moved to continue the hearing to obtain her attendance or for permission to supplement the record. The district court denied the motion stating counsel had made no request to have Doris transported to the hearing, Doris had not made an effort to contact her counsel despite receiving notice of the proceedings, it was not legally necessary for Doris to be present at the hearing, and it would not be in the best interest of Brittany to continue the hearing. The court heard the case and terminated the mother's rights pursuant to Iowa Code section 232.116(1)(d) (1993).

Doris appealed, claiming the district court deprived her of her constitutional right to due process by refusing to continue the hearing until she could attend personally

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or refusing her the opportunity to supplement the record. On March 1, 1994 we issued an order to the district court to allow Doris to supplement the record of the termination hearing. We directed the district court to consider any additional evidence Doris presented and either affirm or modify its order. We retained jurisdiction.

On March 24, 1994 the district court held a hearing to allow Doris to testify. The district court, after considering Doris's testimony affirmed its prior order terminating Doris's parental rights to Brittany. We now consider that decision of the district court and affirm the termination of Doris's parental rights pursuant to Iowa Code section 232.116(1)(d).

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

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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). The State sought to terminate Doris's rights to Brittany pursuant to Iowa Code section 232.116(1)(d) which states:

(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.

Id.

We find clear and convincing evidence in the record and in Doris's own testimony she has not maintained significant contact with Brittany during the past several years. The evidence also clearly reflects the continuing efforts of the State to help Doris overcome her substance abuse problems and to give her the opportunity to maintain contact with Brittany. Doris has made no efforts to resume care of Brittany. The State has carried its burden to show the elements of Iowa Code section 232.116(1)(d) have been met.

AFFIRMED.

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