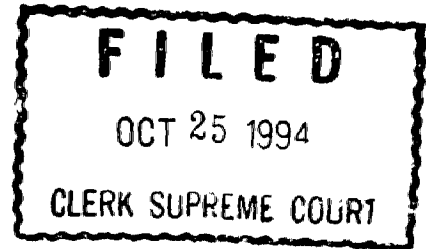


IN THE COURT OF APPEALS OF IOWA

No. 4-238 / 94-0323



IN THE INTEREST OF J.J.O., Minor Child,
E.O., Natural Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury
County, Mary L. McCollum-Timko, Associate Juvenile Judge.

E.O., the mother, appeals from an order terminating her
parental rights to her son J.J.O. **AFFIRMED.**

Randy S. Hisey, South Sioux City, Nebraska, for
appellant-mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Kathrine S.
Miller-Todd, Assistant Attorney General, and Rhoda Tenuta,
Assistant County Attorney, for appellee-State.

John Polifka of the Juvenile Law Center, Sioux City,
guardian ad litem, for minor child.

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

CADY, J.

The juvenile court terminated the parental rights of J.O. and E.O. to their son, J.J.O. E.O. appeals the juvenile court's order but J.O. does not appeal. E.O. asserts she has the mental capacity to care for J.J.O. and the termination was premature. On review, we affirm the juvenile courts order.

E.O. is the mother of J.J.O. J.J.O. was born April 27, 1992. He was eighteen months old at the time of the termination hearing. E.O. was thirty-one years old.

At the time of J.J.O.'s birth E.O. was residing in a shelter and lacked all parenting skills. She requested the assistance of the Department of Human Services and J.J.O. was consequently placed in foster care. In July 1992, following a stipulation by the parties, J.J.O. was adjudicated CINA pursuant to Iowa Code sections 232.2(6)(b) (parent is imminently likely to abuse or neglect the child), (6)(c)(2) (failure of parent to exercise a reasonable degree of care), and (2)(n)(parent's mental capacity results in child receiving inadequate care) (1993). A case permanency plan was subsequently developed which included supervised visitation. E.O. was required to cooperate with services, maintain a stable residence and maintain a safe relationship with her husband, J.O.

E.O. received several services designed to develop her parenting skills. These included Lutheran Social Services, Homemaker Services, financial and residential

aid, parenting classes through Crittenton Center, and employment through Goodwill Industries. Overall, E.O. failed to cooperate with these services. She changed residences frequently, was consistently homeless, and did not inform the services of her new location. She frequently missed appointments and was disruptive when services were provided. Moreover, she continued residing with J.O. despite his physically abusive behavior towards her and threats to service providers. She was also admitted to the Cherokee Mental Health Institute for the fifth time since 1989. At the time of the termination hearing, E.O. had resided for two months in a small, windowless, basement bedroom in her friend L.R.'s home. L.R. is a forty-nine year old woman who has raised six children and is now raising her thirteen year old grandson. L.R. manages E.O.'s finances, aids her with daily living skills, medication, and transportation to and from work. She also provides E.O. room and board for \$325 per month.

On September 23, 1993, the State filed a petition for termination of E.O. and J.O.'s parental rights. Following the hearing on January 27, 1994, the juvenile court terminated both parents' rights to J.J.O. E.O.'s rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (lack of significant contact), (g) (custody has been transferred from parent for at least six consecutive months), (h) (child in need of assistance based

on finding of neglect with no change of circumstances after assistance offered), and (j) (parent has chronic mental illness and based on prognosis child can not be returned to custody of that parent) (1993).

E.O. appeals. She contends the juvenile court erred in terminating her parental rights due to her mental incapacity. She also claims the evidence did not support termination.

Appellate review of termination proceedings is de novo. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992). Accordingly, we review both the facts and the law and adjudicate rights anew. Id. We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses whom that court heard and observed first hand. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We are not, however, bound by those findings. Id.

Our primary concern in termination cases is the best interests of the child. Iowa R. App. P. 14(f)(15); In re L.L., 459 N.W.2d 489, 493 (Iowa 1990). In determining what is best for the child we look to the child's long range and immediate interests. In re Dameron, 306 N.W.2d at 745. We also look to the past performance of the parents because it is an indication of the quality of care the parents are capable of providing in the future. In re A.M.S., 419 N.W.2d 723, 726 (Iowa 1988).

E.O. contends termination of her parental rights is premature and there is potential for future reunification with J.J.O. She asserts she is making strides in her personal care and her parenting skills. She has established a permanent residence with a friend who helps her with daily living skills and has ended her abusive relationship with J.O.

While we applaud E.O.'s progress, we believe it is insufficient to justify reunification with J.J.O. E.O. has received extensive services from the Woodbury County Care Facility and other agencies for the past twenty-four years. Since J.J.O.'s birth these services have increased. They were offered to enable E.O. to gain the skills necessary to care for herself and J.J.O. The record clearly indicates, however, E.O. has not benefited from the services nor has she progressed to the level where she can parent J.J.O. even with outside aid.

E.O. suffers from organic anxiety disorder and borderline intellectual functioning which prevent her from performing at a minimum level required to care for herself or J.J.O. E.O.'s multi-disciplinary case management team recommended E.O. reside in a twenty-four-hour supervised living arrangement. At trial, several experts testified E.O. is unable to parent due to her disorders and is a high risk for abusive child/parent interactions. All recommended termination of E.O.'s parental rights.

Impaired mental ability standing alone is an insufficient basis for terminating parental rights; it can, however, be a contributing factor to the inability to perform essential parental duties. In re E.B.L., 501 N.W.2d 547, 551 (Iowa 1993) (citing In re K.F., 437 N.W.2d 559, 560 (Iowa 1989)). Termination is appropriate when the parent lacks the capacity to meet the child's present needs as well as the child's future needs. Id. (citing In re A.M.S., 419 N.W.2d at 733-34). The record clearly indicates E.O. lacks the ability to meet J.J.O.'s present and future needs. E.O. has been hospitalized numerous times for her mental illness. She only began living on her own after being forced to leave the Woodbury County home due to violent, noncooperative behavior. Moreover, her behavior has been repeatedly characterized by uncontrolled anger, poor judgment, and impulsive actions such as attempted suicide. With the exception of the two months prior to the termination hearing, E.O. was unable to maintain a permanent residence, attend scheduled visitation with J.J.O. or meet the requirements of the case permanency plan.

Moreover, J.J.O. has special needs of his own. He is developmentally delayed and will require extraordinary parenting skills. E.O. simply does not have these skills due to her special needs and circumstances.

Despite these facts, E.O. asserts her living situation is now stable and at some point in the future there is "a

potential" that J.J.O. could be placed with her in a supervised living situation. We have been emphatic that after the statutory limit of twelve months cases must be reviewed with a sense of urgency. In re L.L., 459 N.W.2d at 495. "The period of [parental rehabilitation] must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." In re R.J., 436 N.W.2d 630, 636 (Iowa 1989). In the present case, J.J.O. has been in out-of-home placement since birth. At the time of trial, he had already been waiting a year and a half for E.O. to achieve the parenting skills necessary to care for him. More time in foster care awaiting an improbable reunification with his mother is not in J.J.O.'s best interest. We, like the juvenile court, find there is clear and convincing evidence that E.O. is unlikely to ever be able to perform essential parenting skills.

The best interests of J.J.O. require E.O.'s parental rights be terminated. The decision of the juvenile court to terminate E.O.'s rights is affirmed.

AFFIRMED.

Habhab, J., concurs; Sackett, P.J., specially concurs.

SACKETT, P.J. (Specially concurs)

I concur in the result only.