

IN THE COURT OF APPEALS OF IOWA

No. 4-236 / 93-1586

IN THE INTEREST OF K.L. and K.L., Minor Children,

R.Y., Father,
Appellant,

STATE OF IOWA,
Appellee-Cross-Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge.

Rich, the father, appeals the termination of his parental rights to Katie. The State and guardian ad litem appeal the juvenile court's failure to terminate Susan's, the mother's, rights to both Kayla and Katie, and Ron's, the father's, rights to Kayla. **AFFIRMED IN PART AND REVERSED IN PART.**

James C. Larew of Larew Law Office, Iowa City, for appellant-father of younger K.L.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General for appellee-cross-appellant-State.

Eleanor Dilkes of Weideman & Dilkes, Iowa City, appellee-cross-appellant-guardian ad litem for minor children.

Stephen N. Greenleaf of Lynch, Greenleaf & Michael, Iowa City, for cross appellee-mother.

Mark Meyer of Kinnamon, Kinnamon, Russo & Meyer, Iowa City, for cross-appellee-father of older K.L.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Rich appeals the termination of his parental rights to Katie. The State and the guardian ad litem appeal the juvenile court's failure to terminate Susan's parental rights to both Kayla and Katie as well as its failure to terminate Ron's parental rights to Kayla. We affirm in part and reverse in part.

Kayla was born to Susan and Ron in October 1988. She was adjudicated CINA in September 1991 after Susan failed to provide proper supervision. Susan had left Kayla with a boyfriend, Rich, who was charged with indecent contact with Kayla. The court ordered Susan not to allow further contact between Kayla and Rich. The court also ordered Ron to visit Kayla monthly, but he failed to do so.

Katie was born to Susan and Rich in January 1992. In April 1992 both children were removed from Susan's custody and placed in foster care after Rich punched Kayla, giving her a black eye. Katie was adjudicated CINA in July 1992.

In June 1993 the State filed petitions to terminate the parental rights of Kayla's and Katie's respective parents. The district court terminated Rich's parental rights to Katie pursuant to Iowa Code section 232.116(1)(g) because he could never provide a home for her, there was no bonding between them, and he had violated the no-contact order and abused Kayla. The court delayed termination of Susan's and Ron's parental rights for six months in the hope that Ron would establish a bond with Kayla and that Susan would mature enough to care for her children.

Rich, the State, and the guardian ad litem appeal. Rich contends the State failed to provide him with adequate services; there was a lack of clear and convincing evidence on which to base termination; and termination is not in Katie's best interests. The State, supported by the guardian ad litem, contends the district court erred in failing to terminate Susan's and Ron's parental rights when it made findings of fact which called for termination.

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. Iowa R. App. P. 14(f)(7).

Our paramount 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. A parent's past performance may indicate the quality of care the parent is capable of providing in the future. In re L.L., 459 N.W.2d 489, 493-494 (Iowa 1990).

Rich contends the State failed to provide adequate services to reunify him with Katie. The record does not support his contention. Rich was convicted of assault for

abusing Kayla, which posed a serious threat to Katie. He failed to take advantage of the parenting classes offered to him, and his visitation with Katie was minimal. The State satisfied its burden of proving the elements of section 232.116(1)(g) existed by clear and convincing evidence. We affirm the termination of Rich's parental rights to Katie.

The State and the guardian ad litem contend the juvenile court erred in not terminating Susan's rights to both children and Ron's parental rights to Kayla. We agree.

When children have been in foster care for twelve months, the case must be viewed with a sense of urgency. In re A.C., 415 N.W.2d 609, 614 (Iowa 1987), cert. denied, 485 U.S. 1008 (1988). Children should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). They cannot await the maturity of their natural parents. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Children deserve constant, responsible, and reliable parenting. In re L.L., 459 N.W.2d 489, 495 (Iowa 1990).

At the time of the termination hearing these children had been in foster care for sixteen months. Susan still had not developed the parenting skills necessary to protect these children from abuse and neglect despite the continued efforts of the department of human services and other providers. The record clearly indicates Susan cannot

provide an appropriate home for the children and a considerable amount of time was needed before they could be returned safely to her.

In addition the record shows it is not possible to return Kayla to Ron's custody now or in the distant future. Ron does not possess the parenting skills necessary to care for Kayla. He has had minimal contact with Kayla over large periods of time, and there is no bonding between between them.

The record in this case is clear. The statutory time period has elapsed since Kayla and Katie were removed from their home, and they cannot be returned safely to their parents. Although we admire the juvenile court's attempts to provide these parents with more time to mature and establish relationships with their children, we cannot continue to place their interests above Kayla's and Katie's interests. The court's decision to stay termination for six months is not supported by the evidence or the court's own findings of fact. We therefore reverse the juvenile court and order the termination of Susan's parental rights to Kayla and Katie and the termination of Ron's parental rights to Kayla.

We determine all other issues the parties may have raised are either covered by this opinion or are without merit.

AFFIRMED IN PART AND REVERSED IN PART.

Cady, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, J. (dissenting)

I concur in part and dissent in part. I would affirm.

I am in agreement with the majority statement, "Children deserve responsible and reliable parenting." However; termination of parental right provides no assurance a child will have responsible and reliable parenting.

The record is very clear that Kayla, now nearly six years old, has a strong bond both with her mother, Susan, and with her half-sister, Kathryn.

I recognize, as does the majority and as did the trial court, Susan has performed poorly as a parent. Susan was eighteen when her first child was born. She has matured slowly.

The juvenile court found:

> The evidence establishes Susan . . . is capable of taking care of her children and providing for their safety and welfare and providing a stable environment for the children if she chooses to do so. In the past she has made poor choices and has placed her personal interests above that of her children.
>
> However, the Court notes that Susan is getting older, and at some point she will be mature enough to care for her children. The Court must decide whether the children should be removed at this time or whether to grant Susan an additional six months in which to get her life in order so that the children could remain with their mother. The Court is willing to gamble at this time that Susan will obtain the needed maturity within the next six months such that the children can be returned to her into a safe environment and that she will place the needs of the children above those of her own. In making that decision the Court notes the assistance that her aunts are now giving her to help her be settled and to become an adult in handling her responsibilities to her children.

The juvenile court found as to Ronald's rights:

> The Court delays termination of the parental rights of Ronald . . . to his daughter, Kayla, with the hope that he will attempt to establish some bond with his daughter during the next six months that the Department of Human Services works with Susan in the hope of returning custody to her. The Court finds that in the event Susan should have custody of the children, there would be no need to terminate the parental rights of Ronald . . . to Kayla.

The State's brief sets forth no plan for the children's futures after terminations. The foster parents only said they would talk about adoption. The only reference in the State's brief to the children's future is it said the children were adoptable. The State advances no specifics as to how this will be accomplished. Nowhere in the record is there any information about the number of children the department currently is seeking to place for adoption.[1] Termination of parental rights savers the biological ties a child has with his or her parents. It does not assure the children adoptive homes nor any permanency. The juvenile court, who saw the parties and heard the testimony, felt Susan, with with the help of an aunt who intervened, had a reasonable chance to assume care of her children. I find no reason to disagree with this assessment.

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1. In 1992, of the 263 special-needs children freed for adoption, only 138 were adopted. See Phoebe Wall Howard, Special-needs Kids Pray for New Families, New Lives, Des Moines Sunday Register, October 10, 1993, at 1A. Also, I learn from Mary Kelley, Foster-care Frustrations Growing, The Des Moines Register, Mar. 20, 1994, at 5A, that from department sources there are 150 to 260 foster children seeking adoption and the Director of Iowa Citizens Foster Care Review Board states there may be as many as 500 foster children seeking adoption.