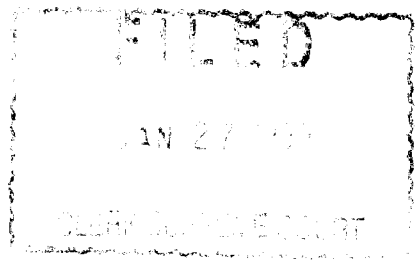
IN THE COURT OF APPEALS OF IOWA

No. 1998-16 (8-750) / 98-1321
Filed January 27, 1999



IN THE INTEREST OF
C.L., Jr. and W.L., Minor Children,

K.L., Mother,
Appellant.

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

The mother appeals the juvenile court order terminating her parental rights.

AFFIRMED.

Susan R. Stockdale of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Barbara E. B. Galloway, Assistant Attorney General, for appellee-State.

Kimberly Ayotte of the Youth Law Center, Des Moines, guardian ad litem for minor children.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

VOGEL, J.

Kerry, the mother of Charles and William, appeals the juvenile court order terminating her parental rights. She contends the court erred in (1) finding clear and convincing evidence of physical or sexual abuse or neglect, and (2) terminating her parental rights without first providing services focused on eliminating physical or sexual abuse or neglect.

Background. Kerry and Charles Sr. are the parents of Charles Jr. (Chuckie) born in February 1988, and William, born in July 1997. William was removed from their custody by consent on July 24, 1997, after he tested positive for cocaine at birth. Chuckie was removed from their custody on August 1, 1997. The children were adjudicated in need of assistance on August 11, 1997, and placed in foster care.

In September 1997 Kerry and Charles Sr. were afforded visitation with the children and ordered to attend substance abuse treatment and counseling, to comply with the recommendations of their psycho-social evaluations. They also were to provide drug screens. They complied with the drug screening, but Kerry tested positive in 21 of 29 drug screens, and Charles Sr. tested positive in 27 of 34 drug screens. Kerry accepted drug counseling and treatment, but immediately relapsed upon completion. She refused further treatment. Charles Sr. did not complete a second substance abuse evaluation, admitted bringing drugs into the home, failed to participate in parenting classes or individual therapy, and failed to remain sober.

Visitation rights were suspended for both parents because of their lack of cooperation and positive drug screens.

Termination proceedings. On January 27, 1998, the State filed a petition to terminate Kerry and Charles Sr.'s parental rights pursuant to Iowa Code sections 232.116(1)(c), (1)(g), and (1)(k). Kerry's motion to dismiss or for summary judgment arguing the State lacked grounds to terminate her parental rights under section 232.116(1)(c) (termination based on finding of physical or sexual abuse or neglect) was denied by the court. At the termination hearing, the State produced evidence of physical and sexual abuse against Chuckie, in addition to the parents' admitted drug abuse. Kerry admitted pushing, shoving and yelling as a result of her and Charles Sr.'s drug use. Charles Sr. denied any domestic violence. The district court found the drug abuse created a home life of chaos and violence for Chuckie. It determined that although both parents were offered reasonable and appropriate services, including in-patient drug treatment, they either refused or did not cooperate with the services, denied any problems, denied possible sexual abuse of Chuckie, and failed to benefit from the programs they did complete. Accordingly, the court concluded that neither child could be returned to the custody of either parent. It determined termination of parental rights was in the best interest of the children and they deserved a safe, secure home. The court concluded all the allegations of the termination petition were proven by clear and convincing evidence, and terminated Kerry and Charles Sr.'s parental rights.

Physical Abuse Finding. Kerry appeals only from the portion of the district court order terminating her parental rights pursuant to section 232.116(1)(c).[1] She argues that section 232.116(1)(c) was inapplicable to the termination proceedings because the court never adjudicated the children to be in need of assistance based on a finding either child had been physically or sexually abused. Kerry interprets the court's order to be contrary to the plain language of the statute by not requiring the State to produce evidence of actual physical or sexual abuse or neglect. She also contends the court erred in terminating her parental rights under this section when none of the services provided to her addressed physical or sexual abuse or neglect issues.

The State argues Kerry failed to preserve her argument that the services offered to her were inadequate by not raising this issue before the district court. It also argues physical abuse or neglect of William was established in the CINA proceedings because he was born with cocaine in his system. It maintains the termination of parental rights as to Chuckie pursuant to section 232.116(1)(c)(1) was proper because that section provides the physical abuse of one child serving as the basis for a CINA

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[1] Iowa Code section 232.116(1)(c) (1997) reads:

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

adjudication may also serve as grounds for termination of parental rights for another child in the same family.

Kerry does not seek to overturn the termination of her parental rights under Iowa Code sections 232.116(1)(g) or (k). They are terminated. Rather, she seeks only to have the termination under Iowa Code section 232.116(1)(c) (physical or sexual abuse) reversed to avoid the stigma "of being branded a physical and/or sexual abuser." This section of the code requires one of the children to be adjudicated in need of assistance "after finding [either child] to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents." Iowa Code § 232.116(1)(c)(1). Kerry asserts neither child was adjudicated based on such a finding. We disagree. In the CINA adjudication order the court found clear and convincing evidence supporting the allegations of the petition. The CINA petitions alleged William tested positive at birth for cocaine in his body. We hold such a finding constitutes physical abuse or neglect as set forth in section 232.116(1)(c). Because William suffered physical abuse or neglect because of Kerry's act of using cocaine during her pregnancy, section 232.116(1)(c) applies also to Chuckie. The Department offered Kerry the reasonable services of substance abuse evaluation and treatment. At the time of the termination hearing, Kerry had not resolved her substance abuse. We find Kerry was "offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services." Iowa Code

§ 232.116(1)(c)(2). We conclude, therefore, Kerry's parental rights to William and Chuckie were correctly terminated under Iowa Code section 232.116(1)(c).

AFFIRMED.