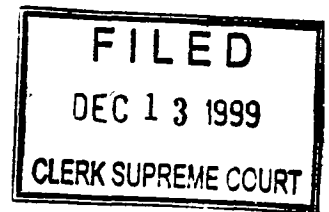


IN THE COURT OF APPEALS OF IOWA

No. 1999-303 (9-533) / 99-155
Filed December 13, 1999



IN THE INTEREST OF
H.H., Jr., J.G., and K.H., Minor Children,

H.A.H., Father,
Appellant,

K.A.G., Mother,
Appellant.

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

A mother and father appeal the termination of their parental rights to their
children. **AFFIRMED.**

Jeffrey T. Mains of Benzoni Law Office, P.L.C., Des Moines, for appellant-
father.

Lori Holm, Des Moines, for appellant-mother.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant
Attorney General, for appellee-State.

Nancy Pietz, Clive, guardian ad litem for minor children.

Considered by Sackett, C.J., Zimmer, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

SCHLEGEL, S.J.

Kathy, the mother of Jeffrey, born in June 1987, Kristie, born in October 1991, and Henry, Jr., born in May 1993; and Henry, Sr., the father of Kristie and Henry, Jr., appeal the juvenile court's termination of their parental rights. The putative father of Jeffrey is deceased. Kathy claims the State failed to make reasonable efforts to reunite her with the children. She also claims Henry, Sr.'s lack of parenting ability was impermissibly imputed to her. Henry, Sr. claims the court erred in determining the children could not be returned to his care and in determining any physical problems the children suffered were his fault. We affirm.

Background and CINA proceedings. The Iowa Department of Human Services (DHS) first became involved with this family in 1987 because of a founded report that Jeffrey, then five to six months old, was being left home alone. Two founded reports of denial of critical care occurred in 1993 and another in 1995. In 1994 the family received family preservation and in-home services and Kathy completed PINC.¹ Beginning in August 1995, the family received services from DHS and Mid-Iowa. In April 1996 the State filed petitions alleging Henry, Jr., Kristie, and Jeffrey were children in need of assistance under Iowa Code sections 232.2(6)(b), 232.2(6)(c)(1), and 232.2(6)(c)(2) (1995).² In June 1996 the court

¹ Parent-Infant Nurturing Center

² These sections provide

6. "Child in need of assistance" means an unmarried child:

* * *

b. Whose parent, guardian, other custodian, or other member of the

adjudicated the children to be in need of assistance under section 232.2(6)(c)(2) only. The court continued the allegations under sections 232.2(6)(b) and (c)(1) for six months and returned the children to their home. On August 28, 1996, the court ordered the children removed from their parents' custody based on new founded reports of physical and sexual abuse. On September 18, 1996, after a dispositional hearing, the court confirmed the removal, adopted the case permanency plan, and set a review hearing for December 1996.

Kathy began individual therapy in October 1996. She made some progress in therapy, but continually denied any sexual abuse occurred. Her therapist reported Kathy made minimal progress and was still very immature and dependent on Henry, Sr. Henry, Sr., attended therapy sessions but denied any sexual abuse. He stated all he and his therapist talked about was football.

The March 1997 review hearing was continued to August 1997. In August the court continued the hearing to September. The review order entered October 7, 1997, confirmed prior orders except as modified and set a review hearing in March 1998. In February 1998 visitation was suspended because of the adverse effect it was having

household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

- (1) Mental injury caused by the acts of the child's parent, guardian, or custodian.**
- (2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.**

~~on the children.~~ Both the State and the parents moved for a hearing on visitation, which ~~the~~ court set for April 1, 1998. On March 28, 1998, the State petitioned to terminate Kathy's and Henry, Sr.'s parental rights.

Termination proceedings. The termination hearing was held on June 3-5, July 15, and August 27, 1998. The court found the children suffered from multiple problems when they entered foster care in 1996. The services provided included, among others, in-home services, family therapy, parent skill training, individual therapy for everyone, and psychosocial evaluations. The court found Kathy and Henry, Sr. cooperated with services designed to alleviate the problems which led to the children's removal and to help them develop parenting skills, but they were either unable or unwilling to change. The court terminated Kathy's parental rights to Jeffrey and Kristie under Iowa Code sections 232.116(1)(e) and (h). Kathy's and Henry, Sr.'s parental rights to Henry, Jr. were terminated under section 232.116(1)(h) only because the State mistakenly cited 232.116 1)(g) as to Henry, Jr., and he was five years old, not three. The court terminated Henry, Sr.'s parental rights to Kristie under sections 232.116(1)(e) and (h). The court made no findings concerning adoptability of the children. Both Kathy and Henry, Sr. appeal.

We review proceedings to terminate parental rights de novo -- reviewing the facts as well as the law and adjudicating parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly regarding the credibility of witnesses, but are not bound by them. *In re*

L.L., 459 N.W.2d 489, 493 (Iowa 1990); In re R.R.K., 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

Appellate claims. Kathy claims the State failed to make reasonable efforts to reunite her with the children. She also claims Henry, Sr.'s lack of ability to parent the children was impermissibly imputed to her. Henry, Sr. claims the court erred in determining the children could not be returned to his care and in determining any physical problems the children suffered were his fault.

Analysis. When asked whether the children could safely be returned to Kathy's care, her therapist testified she didn't "have a good feeling about that one way or the other." In the next two questions, however, when asked whether Kathy had made enough progress to be in a position to have her children returned to her care (based on assuming responsibility, gaining insight into the problem and how to correct it) she responded, "I guess no." The therapist acknowledged Kathy does not believe any sexual abuse occurred or that there has been significant abuse in the home. Kathy only understands the children were removed because of lack of supervision, although she does admit slapping Kristie. Kathy continues to live with Henry, Sr. She is unemployed and only just before the termination hearings settled in a residence of her own instead of living with friends. Kathy has not demonstrated the ability to provide a safe home for her children or to protect them from physical and sexual abuse. Her plan for correcting the lack of supervision problem was to get Henry, Sr. to be more involved in the children's care. The State has the duty to see every child within its

borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). The court correctly found the children could not be returned to Kathy's care.

Kathy makes an interesting argument concerning the court's finding the State had not provided clear and convincing evidence to support termination under section 232.116(1)(c).³ Kathy asserts the court's finding means the State "failed to prove by clear and convincing evidence that the children had been physically or sexually abused." This claim misunderstands the requirements of section 232.116(1)(c). All the court's finding does is acknowledge the children were not adjudicated CINA on the basis of sexual or physical abuse. The court did not find the children had not been physically or sexually abused, only that such abuse was not the basis for their CINA adjudication. Indeed, the court made findings concerning the founded physical abuse reports, severe physical punishment in the home, and disclosure of sexual abuse by Jeffrey and Kristie. We find Kathy's argument to be without merit.

³ This section requires proof,
 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.
 Iowa Code § 232.116(1)(c)(1).

~~Kathy next~~ claims the State failed to make reasonable efforts to reunite her with her children. Various CINA review orders found the State was making reasonable efforts. Kathy did not appeal those orders. Except for her motion concerning visitation made in 1998, Kathy does not appear to have demanded other services or challenged the case permanency plans. While the State has the obligation to make reasonable efforts, the parents have a responsibility to demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges to the plan for reunification should have come when the plan was entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the service plan at the termination hearing. *See In re C.D.*, 508 N.W.2d at 101. Her claim concerning reasonable services comes too late.

Kathy also argues her interests as a parent must be balanced with the rights and interests of the children. She is correct in her claim, but fails to recognize the effect of time on the balancing of interests. The legislature has determined the period after which the interests of the children outweigh those of the parents. It is unnecessary to take from the children's future any more than is demanded by statute. Stated otherwise, plans which extend the twelve-month period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. A.C. v. Iowa*, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988). At some point, the rights

and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). We find that point has been reached in this case.

Finally, Kathy argues the court impermissibly imputed Henry, Sr.'s lack of parenting ability to her. She claims the State never told her that ending her relationship with the father would help her regain her parental rights. She asserts, "Because the evidence shows Kathy's progress and remorse for the pain she's caused her children, the only reason to not return the children to her is because of Henry, Sr." The discussion above disposes of her claim the children could be returned to her if it were not for Henry, Sr.'s acts. The court did not impute Henry, Sr.'s actions to Kathy. Rather, it recognized Kathy's inability to keep her children safe and to provide for their needs. Termination of Kathy's parental rights was proper, and we affirm.

Much of the recitation of facts in Henry, Sr.'s brief consists of an attempt to show the physical and behavioral problems experienced by Henry, Jr. had organic causes or were contributed to by Kristie or the foster family. Despite founded sexual abuse reports, Henry, Sr. and Kathy continue to deny the abuse. Henry, Sr. claims he did not sexually abuse his children and that Kristie fabricated the accusations.

Concerning section 232.116(1)(e), Henry, Sr. argues no definitional grounds of a child in need of assistance exist. He denies he sexually abused Kristie. He claims there is no causal relation between Henry, Jr.'s problems and his parenting skills. He cites Kathy's admission she hit Kristie. Henry, Sr. does not address the observations of abuse made by Jeffrey other than his blanket denial. However, even

apart from his being the perpetrator of abuse, several reports relate to other persons. Henry, Sr. did not protect his children from abuse. He has not made progress in therapy or parenting skills to demonstrate he can provide a safe, secure environment for his children. Under the statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *Dameron*, 306 N.W.2d at 745. Clear and convincing evidence supports termination under section 232.116(1)(e).

Concerning section 232.116(1)(h), Henry, Sr. denies the evidence supports the predicate finding of subsection 232.116(1)(h)(1) that the children suffered physical or sexual abuse or neglect caused by the acts or omissions of one or both parents. He claims Kristie's and Henry, Jr.'s health problems "were never diagnosed as being caused by physical or sexual abuse." The original, stipulated CINA adjudication was based on lack of supervision. The abuse, neglect, and mental injury grounds were continued. However, the September 1996 disposition order found all three children "cannot be protected from physical abuse without transfer of custody." A founded physical abuse report in July 1996 listed Henry, Sr. as the perpetrator of abuse on Henry, Jr. and describes Henry, Sr. as "an aggressive, abrasive individual that is aggressive to his children even in the presence of CPI and providers." The investigator observed the father "being very aggressive with these children including pulling them up by the arm, grabbing things in an aggressive manner, pushing them

and slapping/hitting them in the head." Henry, Sr.'s denials of abuse are not credible.

Termination under section 232.116(1)(h) was proper, and we affirm.

When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d at 276. However, for the reasons set forth above, we affirm the termination of Kathy's and Henry, Sr.'s parental rights to Jeffrey, Kristie, and Henry, Jr. on all grounds.

AFFIRMED.