

IN THE COURT OF APPEALS OF IOWA

No. 1999-5 (9-047) / 98-1106

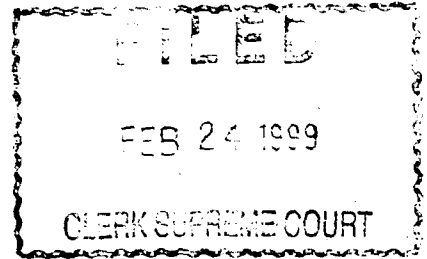
Filed February 24, 1999

IN THE INTEREST OF B.M., G.M., AND D.M., JR.,

Minor Children,

D.M., Father,
Appellant,

B.M., Mother,
Appellant.



Appeal from the Iowa District Court for Emmet County, W.B. McDonald,
Associate Juvenile Judge.

The father and mother of three minor children appeal a juvenile court order terminating their parental rights. **AFFIRMED.**

Priscilla E. Forsyth, Spirit Lake, for appellant father.

Maynard M. Mohn and John A. Kauer of Law Offices of Mohn & Kauer,
Estherville, for appellant mother.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney
General, and Julie Fillenwarth, Assistant County Attorney, for appellee State.

William B. Ridout of Sanderson & Ridout, Estherville, guardian ad litem for
minor children.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

The father and mother of three minor children appeal a juvenile court order terminating their parental rights. The father contends the State failed to prove the children could not be returned to their parents' care and termination was not in the children's best interests. The mother argues the court erred in concluding the children could not be returned to their care and the State failed to use reasonable efforts to reunite the family. We affirm.

Dave and Bonnie are the parents of Brooke, born in 1988, Greg, born in 1989, and David, Jr., born in 1993. Prior to this case, several abuse and neglect reports were founded against Bonnie. On March 8, 1995, the State filed a Children in Need of Assistance (CINA) petition on behalf of the children after the Department of Human Services (DHS) determined the children were not receiving proper care because of their parents' alcohol and substance abuse. The children were placed in foster care. The court ordered both parents to receive substance abuse evaluations and treatment.

In July 1996, Dave completed in-patient substance abuse treatment and in October 1996 was reunited with the children. Dave soon suffered a relapse and the children were returned to foster care. Despite a number of attempts by the parents to attend substance abuse counseling and treatment, neither successfully completed a program. Both parents continued drinking despite the juvenile court's orders. Unsupervised visitation eventually was changed to supervised after DHS workers

observed the parents, particularly Bonnie, had difficulty disciplining and supervising the children.

The initial CINA adjudication was made in April 1995. After several continuances, the dispositional hearing was held in October 1995. Review hearings occurred in April 1996 and October 1996. The court scheduled the permanency hearing for April 1997, but instead held a review hearing at that time. The State filed a petition to terminate parental rights in late July 1997.

The State alleged grounds for termination under Iowa Code sections 232.116(1)(c), (d), (e), (h), and (k).¹ Following a hearing, the

¹ Those sections read:

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.

* * *

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents 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. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative

juvenile court terminated both parties' parental rights only under section 232.116(1)(e), finding no necessity to address the other grounds. The court concluded Bonnie's efforts and progress had improved dramatically since the termination

duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

* * *

e. The court finds that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

* * *

h. The court finds that all of the following have occurred:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
- (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

* * *

k. The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

petition was filed, but such efforts were too late to benefit the children. The court also found Dave continued to drink despite its directives and was at high risk of failing to maintain sobriety. Bonnie and Dave have appealed.

Dave contends the State offered him no further services after his relapse in 1996. He asserts Bonnie's chances of a relapse are low, and their new relationship is stronger. He maintains it is unfair to judge their parenting skills based only on supervised visitation. Dave claims it is in the children's best interests to remain with their family. Bonnie also maintains the State failed to prove by clear and convincing evidence the children could not be returned to their care. She asserts the State failed to use reasonable efforts to facilitate reunification with the children.

The requirement of Iowa Code section 232.116(1)(e)(4) is met "when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988); *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for the termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). David, Jr. has fetal alcohol syndrome and is a difficult child to parent. Brooke manipulates her mother to gain more attention, distracting Bonnie from supervising Greg and David, Jr. adequately. Bonnie had maintained sobriety for about nine months at the time of the termination hearing, but only had made a serious attempt to overcome her substance abuse and improve her parenting skills *after* the

State filed the termination petition. She has attended parenting classes, but does not seem to be able to apply what she is taught when she is with the children. The evidence in the record of Bonnie's past abuse and neglect of the children, her tenuous sobriety, and her lack of parenting skills supports a finding the children cannot be returned to her care because the grounds set forth in sections 232.2(6)(b), (c)(2), and (n) exist.² Termination of Bonnie's parental rights was proper.

Bonnie also claims the Department did not make reasonable efforts to reunite the children with their parents. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In Interest of T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). *See generally* Iowa Code § 232.102. Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code § 232.102(9)(a). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting

² These sections provide:

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

(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.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

the child from the harm responsible for the removal. *Id.* Although the State has the obligation to make reasonable efforts, 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 come when the plan is 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. This issue should have been raised earlier and we will not consider it now. *Id.*

David claims there was not clear and convincing evidence the children could not be returned to their parents. He has a past history of alcohol abuse. He admits he has continued to drink. David relapsed after his substance abuse treatment. He provided no evidence other than his own assertion he no longer drinks to excess. He has not complied with the requirements of the case permanency plan to abstain from alcohol. The evidence supports a finding the definitional grounds of section 232.2(6)(c)(2) exist and (n) is likely to occur. David and Bonnie have had a stormy marriage. They were living together at the time of the termination hearing, but they have separated in the past. Returning the children to such an unstable home would not be in their best interests.

David also argues, even if grounds for termination exist under section 232.116(1)(e), it is not in the children's best interests. *See Iowa Code § 232.116(3).*³

³ This section provides, in relevant part:

3. The court need not terminate the relationship between the parent and child

David asserts Brooke and Greg say they would prefer to live with their parents. The record reveals they also have said they would prefer to live with their foster family. David also argues he and Bonnie love the children and the children love them. He offers nothing else to support his claim termination would be detrimental because of the closeness of the parent-child relationship.

The foster family desires to adopt all three children. They have flourished in the foster home. David, Jr. has improved to the point he does not use Ritalin to control his ADHD. We find the best interests of the children require termination.

AFFIRMED.

if the court finds any of the following:

- b. The child is over ten years of age and objects to the termination.
- c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.