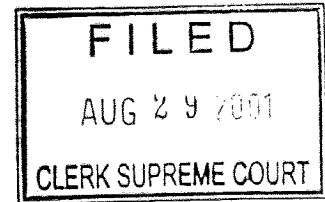


IN THE COURT OF APPEALS OF IOWA

No. 1-488 / 00-1534
Filed August 29, 2001



IN THE INTEREST OF B.M. and B.M.,
Minor Children,

R.R., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes
Davis, Associate Judge.

A mother appeals the juvenile court's order terminating her parental rights
to her children. **AFFIRMED.**

Robert S. Gallagher of Gosma and Gallagher, P.L.C., Davenport, for
appellant.

Thomas J. Miller, Attorney General, and Mary Pippin, Assistant Attorney
General, William Davis, County Attorney, and Gerda Lane, Assistant County
Attorney, for appellee-State.

Patrick J. Kelly, Bettendorf, for minor children.

Robert Phelps of Phelps & Phelps, for father.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her two minor children. She claims the court terminated her parental rights without due process of law. We affirm.

Regina and Daniel are the parents of Brandon, born in July 1997, and Brianna, born in March 1999. Regina has a history of mental health problems. The relationship between Regina and Daniel is one with many domestic disputes.

The family became involved with the Department of Human Services (DHS) in May 1998. DHS issued a founded report that Regina had struck a child. There were concerns Regina could not care for Brandon alone. Brandon was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n). Brandon was placed in Daniel's care, on the condition Brandon was not to be alone with Regina. Brandon spent most of his time with a babysitter.

When Brianna was born in March 1999, there were concerns because the parents had not arranged for a babysitter to care for her, and social workers believed Regina could not care for the infant alone. Brianna was placed in foster care. She was adjudicated a CINA pursuant to sections 232.2(6)(b) and (c)(2). Due to the family's problems, Brandon was placed in foster care as well in July 1999.

Regina had many problems with anger management. She and Daniel had a very volatile relationship. During a staffing at DHS, Regina hit Daniel in the head with a baby bottle. She was in a physical altercation and broke her finger. She was in another fight and was arrested for public intoxication. She also hit

Daniel and the police were called. The parents were evicted from a homeless shelter because of a verbal outburst Regina directed toward Daniel. In a different incident, Regina received a bruise on her cheek from Daniel, and claimed he had threatened her with a knife.

In May 2000, the guardian ad litem filed a petition to terminate the parental rights of Regina and Daniel to Brandon and Brianna. Regina signed a written Waiver of Service of Notice and Acknowledgment of Receipt of Petition. She attended the pre-hearing conference, where the termination hearing was set for July 14, 2000, at 9:00 a.m. Regina did not attend the termination hearing. Her attorney sought a continuance, and this was denied. The court, however, granted Regina five business days to bring a petition, based on valid grounds, to reopen the record. Regina's attorney did not present any evidence on her behalf at the termination hearing, but he did cross-examine the sole witness, the child welfare specialist who worked on the case.

On July 20, 2000, within the five-day limit set by the juvenile court, Regina filed a motion to reopen the termination hearing. The motion alleged Regina was in Peoria, Illinois, with her parents on July 13, 2000, and did not have adequate transportation to return to Davenport, Iowa, for the hearing. Regina told her attorney she had walked from Peoria to Davenport on the morning of July 14, 2000, but had not arrived at the courthouse until 10:30 a.m., and the hearing had already taken place.

The juvenile court denied Regina's motion to reopen, finding Regina had not alleged sufficient grounds to reopen the hearing. The court stated it was ridiculous to claim she had walked from Peoria to Davenport the morning of the

hearing because the towns were roughly one hundred miles apart. The court noted Regina knew the time of the hearing, and should have arranged for adequate transportation. In a separate order, the juvenile court terminated Regina's parental rights to Brandon and Brianna under section 232.116(1)(g).¹ Regina appeals.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

Regina contends she was deprived of due process because the court did not grant her motion to reopen the evidence.² She states she provided an explanation for her absence from the hearing, even though her reasons seemed implausible to the court. She points out that she arrived at the courthouse at 10:30 a.m., for the hearing scheduled at 9:00 a.m., and the hearing was already over. She claims this shows she wanted to participate in the hearing, but was unable to get to the courthouse at the time the hearing started. She asserts she was denied her opportunity to be heard.

In a trial to the court, the court has broad discretion to reopen the evidence.³ *In re J.R.H.*, 385 N.W.2d 311, 318 (Iowa 1984). The supreme court has stated, "Such discretion is to be liberally exercised." *Id.* (citation omitted).

¹ Daniel consented to the termination of his parental rights. He is not a party to the appeal.

² The State must meet due process requirements in a termination of parental rights procedure. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982).

³ We find Iowa Rule of Civil Procedure 192, concerning reopening the evidence to correct an oversight or mistake, does not apply in this case. Considering a request to reopen the evidence in a CINA review hearing, the supreme court stated, "Rule 192 is inapplicable. Its placement is in that portion of the rules that are applicable to jury trials." *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984).

Failure to reopen the evidence may be considered an abuse of discretion if the party who sought to reopen is prejudiced. *Smith v. Village Enterprises, Inc.*, 208 N.W.2d 35, 38 (Iowa 1973).

In *J.R.H.*, the juvenile court reopened the record in a CINA review hearing. *J.R.H.*, 358 N.W.2d at 315. It is not clear from the case who requested the record to be reopened, or what the grounds were for requesting the reopening. The father appealed, claiming the record should not have been reopened. On appeal, the supreme court stated:

We find no abuse of discretion; the motion to reopen should have been granted. This is a juvenile case in which the best interests of the children dictate that the rules of procedure be liberally applied in order that all probative evidence might be admitted.

Id. at 318.

In the case *In re T.W.W.*, 449 N.W.2d 103, 104 (Iowa Ct. App. 1989), a mother in a termination proceeding claimed the juvenile court should have granted her a new trial or reopened the record to present more evidence based on her claim of newly discovered evidence. In her appeal, the mother showed what evidence she would like to present and how it was relevant to her case. *T.W.W.*, 449 N.W.2d at 105. We remanded the case and ordered the juvenile court to consider the additional evidence. *Id.*

Based on the facts in the present case, we determine the juvenile court did not abuse its discretion by denying Regina's request to reopen the record. The juvenile court stated it would reopen the record if Regina showed valid grounds for doing so. Regina did not show valid grounds for failing to attend the termination hearing. As the juvenile court pointed out, her story simply was not

believable--she could not have walked from Peoria to Davenport on the morning of the hearing. Also, Regina did not state why she was in Peoria the day before the termination hearing, without adequate transportation to get to the hearing. Furthermore, there is no explanation as to why she did not call her attorney or the court to alert them to her problem.

Additionally, Regina does not allege what evidence she would have presented if she had been present at the hearing. In *T.W.W.*, the mother showed what evidence she would like to present and how it was relevant to her case. *T.W.W.*, 449 N.W.2d at 105. Because Regina has not shown what additional evidence she would like to present, she is unable to show she was prejudiced by the court's decision denying her request to reopen the evidence.

We conclude Regina was not denied due process. She was given notice of the hearing and the opportunity to be heard. She failed to take advantage of that opportunity.

We affirm the decision of the juvenile court which terminated Regina's parental rights.

AFFIRMED.