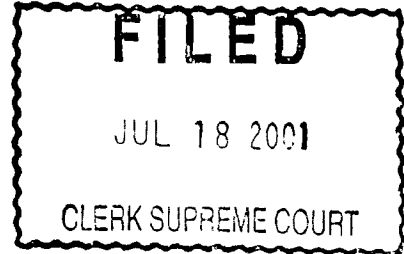


IN THE COURT OF APPEALS OF IOWA

No. 1-317 / 00-1356
Filed July 18, 2001

IN THE INTEREST OF
K.H., Minor Child,

S.J.H., Mother,
Appellant.



Appeal from the Iowa District Court for Linn County, Jane F. Spande,
District Associate Judge.

A mother appeals the termination of her parental rights to her daughter.

AFFIRMED.

Crystal L. Usher of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar
Rapids, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney
General, and Lance Heeren, Assistant County Attorney, for appellee-State.

Ross Hauser, Cedar Rapids, guardian ad litem for minor child.

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

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the care of her paramour, Salvador. The State sought to have prior dispositional orders modified.

On August 5, 1997, Sarah voluntarily placed Kaytah in foster care because of her behavioral problems and an ongoing concern about her failure to thrive. Kaytah, then thirty months old, weighed only as much as an average fourteen-month old. The court ordered family foster care for Kaytah on August 28, 1997 after a contested modification hearing. Within weeks, Kaytah was gaining weight and not demonstrating significant feeding problems except during Sarah's visits.

In September 1997 Sarah married Salvador. By January 1998 there were reports Salvador was physically violent with the older girls. In February he was charged with domestic abuse assault against Sarah, yet he remained in the home. Concern for the safety of the girls increased to the point they were placed in family foster care on April 1, 1998. Also in April 1998 Sarah's visitation with Kaytah was changed from semi-supervised to supervised. It remained supervised until September 1999 when it was suspended entirely.

After Jessica and Adriana were placed in foster care, Sarah began cooperating with service providers and meeting the requirements of the case plan concerning all three girls. Salvador was arrested on drug charges and imprisoned. In December 1998 Jessica and Adriana returned to Sarah's care.

At the recommendation of hospital staff, Kaytah was placed in a therapeutic foster home. While in this home Kaytah began reporting past harm or abuse. She associated this harm with "bad mens" in Sarah's home. A

pediatric psychologist and two play therapists who have worked with Kaytah agree Kaytah suffers from posttraumatic stress disorder and reactive attachment disorder. Her symptoms suggest repeated trauma rather than an isolated incident. The psychologist described the bond Kaytah has with her mother as a "trauma bond" relating to life experiences with Sarah in which Kaytah did not feel safe. In her opinion, Kaytah lacks the necessary foundation of trust ever to be able to establish a positive, nurturing bond with Sarah.

In January 2000 the State petitioned to terminate Sarah's and Trinidad's parental rights. Following a hearing on the petition in May, the court terminated both parents' rights by order filed July 18, 2000. It terminated Trinidad's rights based on abandonment. The court terminated Sarah's rights under Iowa Code section 232.116(1)(e).

The therapeutic foster family have had to keep Kaytah in a controlled, nonstimulating environment free of the triggers for her historical and emotional baggage. These can include such mundane things as clothing, odors, photographs, television, touching, toys, and peer play. Sarah made an effort to identify such triggers, but underplays some of them. Despite the State's provision of nearly six hundred hours of services by the time of the termination hearing, the court found:

Because of the psychological baggage from their past relationship it is extremely unlikely Kaytah and her mother can establish a positive bond or attachment at this time, regardless of the extent of services and therapy.

....

[N]either Kaytah's mental health nor Sarah's appreciation of Kaytah's physical and emotional needs have developed to the

extent reunification can safely occur. Sarah indeed acknowledges that Kaytah is not ready to return home.

....

Kaytah requires an out of home placement with specialized treatment Sarah is unable to provide.

....

As a person who is prepared to blame others for her problems with Kaytah, Sarah is not ready to demonstrate she would be able to take responsibility for Kaytah's physical health, safety, and emotional needs in the future.

Appellate claims. Sarah claims the State did not establish that her daughter would continue to be in need of assistance if returned to her care. Sarah also claims termination is not in Kaytah's best interest because her potential for being adopted is tenuous.

Discussion. We review termination cases de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The State must show grounds for termination of a parent's rights by clear and convincing evidence. *In re S.J.*, 620 N.W.2d 522, 524 (Iowa Ct. App. 2000). A child's rights and needs are paramount in parental termination proceedings. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa Ct. App. 1993). We give weight to the fact findings of the juvenile court but are not bound by them. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

A. *Safe return*--Iowa Code § 232.116(1)(e)(4). A child cannot be returned to a parent's care within the meaning of this section if the child would be placed in danger of any harm that would warrant a child in need of assistance adjudication. Iowa Code § 232.102(5); see *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Kaytah's initial removal was related to her failure to thrive and eating problems. The case plan and services provided addressed these health

concerns. Once Kaytah became verbal and began talking about possible past abuse, attention was focused on Salvador as a possible perpetrator. By the time of these reports, Salvador was no longer involved in the family. The court found:

Inconsistencies and impossibilities as to her allegations however do not render her fears unworthy or groundless. Her allegations of past harm must be taken seriously and not literally as proof of factual events. Certainly, identification of the perpetrator of Kaytah's real or imagined abuse would better focus Sarah's role or responsibility for Kaytah's ongoing problems.

The original problems with failure to thrive and with eating were gone. The concern was for Kaytah's psychological and behavioral problems. The potential harm need not be the harm that led to the child's initial out-of-the-home placement. *In re C.M.T.*, 433 N.W.2d 55, 56 (Iowa Ct. App. 1988). Sarah argues the only thing cited as lacking in her is her refusal to accuse Salvador of sexual abuse based on Kaytah's reports. Sarah acknowledges the possibility Kaytah may have been abused, but denies it occurred in her home. She argues she has complied with the case plan, improved her parenting skills and corrected her deficiencies; therefore Kaytah would not be at risk if returned to her home. Sarah points to her success in establishing a home and in parenting her two older daughters in support of her claim. Sarah also argues weekly supervised visitation of one hour is wholly insufficient to demonstrate to Kaytah that Sarah had made positive and lasting changes.

The State responds that Sarah was resistive to services from 1995 through 1997. Then, once the damage was done, "there was nothing the mother could do that would reverse the effects of her noncompliance, and there was no conceivable program that would lead to reunification for the mother and child."

There is clear and convincing evidence that when Kaytah had contact with her mother and sisters, it had a negative effect on her mental and emotional condition. That is sufficient to meet the requirements of section 232.116(1)(e)(4) in that Kaytah would meet the definition of child-in-need-of-assistance in sections 232.2(6)(c)(1) or 232.2(6)(f). We affirm the termination on this ground.

B. Best interest. When considering whether or not to terminate a parent's rights to a child, even if statutory grounds exist, the court must determine termination is in the child's best interest. See *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). In evaluating what is in the child's best interest, the court gives "primary consideration to the physical, mental and emotional condition and needs of the child". *In re M.S.*, 519 N.W.2d 398 400 (Iowa 1994). The strong potential for mental and emotional harm to Kaytah if returned to Sarah's care confirms the court's determination to terminate Sarah's parental rights. Although a child's potential for adoption is a consideration, it should not outweigh the other factors in determining whether termination is in the child's best interest. It is well established adoptability is not a precondition to termination. *In re N.F.*, 579 N.W.2d 338, 342 (Iowa Ct. App. 1998); *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App.1994).

AFFIRMED.