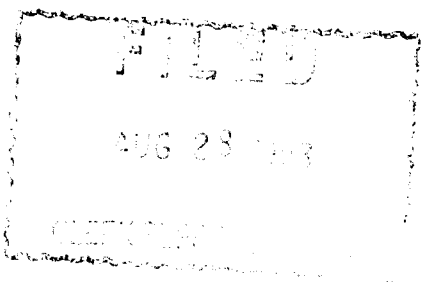
IN THE COURT OF APPEALS OF IOWA

No. 8-312 / 97-1974



IN THE INTEREST OF D.J. and G.M., JR., Minor Children,

A.J., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Associate Juvenile Judge.

The mother of two minor children appeals the district court order terminating her parental rights. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Gerda C. Lane, Assistant County Attorney, for appellee State.

Carol Walker, Davenport, guardian ad litem for minor children.

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

VOGEL, J.

Alicia is the mother of Desire, born in December 1993, and Gary, born in April 1995. The children's fathers are not involved in the present appeal.

The Department of Human Services (DHS) became involved with Alicia in July 1995, after police officers found the two children home alone. The children were placed in foster care for a short period of time and then returned to Alicia's care. The children were again removed from Alicia's care in August 1995, when she was in jail for failure to pay a fine on a theft charge. Desire was placed in foster care and Gary was placed with his paternal grandmother. The children were adjudicated to be children in need of assistance under Iowa Code sections 232.2(6)(b), (c)(2), and (g).

Upon Alicia's release after spending a week in jail, DHS offered family-centered services and parenting skill training. Alicia was inconsistent in meeting social workers and attending visitation.

Alicia was in jail from February 1996 until August 1996 for failure to perform community service. She admitted she had problems with alcohol and marijuana. DHS requested her to have substance abuse and mental health evaluations. She entered a substance abuse treatment program, but was discharged due to her bad attitude.

In October 1996, the juvenile court informed Alicia she had three months to comply with the case permanency plan. By December 1996, Alicia began to make

some progress in implementing parenting skills during visitation. Because of this progress, in January 1997, the juvenile court gave her another three months to show improvement.

In January 1997, Alicia was diagnosed with a major depressive disorder and passive aggressive disorder. She did not follow through with mental health treatment. Alicia completed a substance abuse treatment program in February 1997. During the program, however, she tested positive for marijuana on two occasions. After completing the program Alicia refused to enter a half-way house.

In July 1997, the State filed a petition for termination of parental rights. In August 1997, Alicia entered a residential treatment program. She was still in this treatment program at the time of the termination hearing. Alicia testified she no longer felt depressed and did not need to meet her therapist. She stated she had started to improve her life.

The juvenile court found the children could not be returned to Alicia's care without suffering some abuse and harm within the definition of Iowa Code section 232.2(6) and terminated her parental rights pursuant to section 232.116(1)(g). The court found there had been no measurable change from the conditions that lead to the original adjudication and that Alicia was not motivated to make a change in her life. Alicia appealed.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

Alicia contends the State did not engage in reasonable efforts to reunite her with the children. She asserts her depression had an impact on her ability to comply with the case plan. A parent with a mental illness may need special accommodations. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Alicia believes the State's efforts in this case were not "reasonable" because they did not take into account her depression. She points out termination is an outcome of last resort. *See In re S.O.*, 483 N.W.2d 602, 604 (Iowa 1992).

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). There is no evidence Alicia challenged the plan for reunification when the plan was entered. It is too late to challenge the reunification plan at the termination hearing. *L.M.W.*, 518 N.W.2d at 807.

Alicia waited too long to ask for special services. At some point, the rights and needs of the children rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). The legislature, through section 232.116, directs us to that point. *Id.* We agree with the juvenile court that any progress Alicia may have made was too little to be of any significance for the future care of the children. We find Alicia's parental rights were properly terminated under section 232.116(1)(g). We affirm the decision of the juvenile court.

AFFIRMED.