

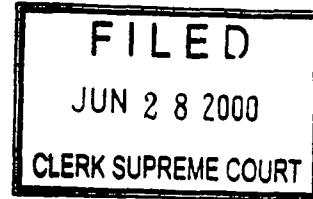
IN THE COURT OF APPEALS OF IOWA

No. 0-287 / 99-1502
Filed June 28, 2000

IN THE INTEREST OF L.C., K.D. and N.D.,

Minor Children,

L.D., Mother,
Appellant.



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

Mother appeals from the termination of her parental rights. **AFFIRMED.**

Lori Holm, Des Moines, for appellant.

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

Christopher Kragnes, Sr., Des Moines, for minor children.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Lathalia appeals from the termination her parental rights to **LaShawntay**, **Keishawnua**, and **Nakia**. We affirm the district court's decision.

I. Factual Background and Proceedings. Lathalia is the mother of LaShawntay, born December 16, 1992; Keishawnua, born June 28, 1995; and Nakia, born June 5, 1996. The father of Keishawnua and Nakia is Nakia D. The father of LaShawntay is Kendall. The three children were removed from Lathalia's custody on April 8, 1998, after she was charged with abuse and neglect. The children were placed in the temporary legal custody of the Department of Human Services ("DHS"), and were adjudicated children in need of assistance on May 27, 1998. DHS placed all three children with Keishawnua and Nakia's paternal grandmother.

After a dispositional hearing held on June 30, 1998, the district court ordered Lathalia to complete a substance abuse evaluation and follow its recommendations; to complete a psychosocial/parenting evaluation and follow its recommendations; to provide urinalyses at the request of DHS; to participate in visitation at the discretion of DHS; and to obtain and maintain safe and drug-free housing.

The district court held a review hearing on December 16, 1998. In addition to the admonitions previously delivered to her by the district court, Lathalia was directed to follow through with individual and marital/couple therapy with her paramour; to maintain a safe, stable, and secure home environment; to

provide for the children's emotional, physical, and educational needs; and to return to substance abuse treatment.

On ~~January 28~~, 1999, the district court entered a modification order transferring custody of LaShawntay to Lathalia's aunt and uncle. Custody of Keishawnua and Nakia remained with their paternal grandmother. Although Lathalia was permitted supervised visitation with the children, visitation ceased after she was involved in a physical altercation with her aunt, and removed LaShawntay from her aunt's custody without permission.

The State filed a petition to terminate parental rights on April 6, 1999. The petition requested the termination of the rights of Lathalia and both of the fathers, Kendall and Nakia. At the time of the termination trial, Nakia, the father of Keishawnua and Nakia, was incarcerated at the Iowa State Penitentiary in Anamosa; and Lathalia was incarcerated at the correctional facility at Oakdale after she admitted using marijuana and cocaine and failed to maintain employment while on probation for a forgery conviction. Lathalia appeared at the termination trial and requested a continuance of six months for the purpose of obtaining further services to make it possible for her to regain custody of her children. Kendall, LaShawntay's father, also requested a six-month continuance.

Although Lathalia successfully completed a drug treatment program at one time, she later relapsed and has failed to remain substance free. She admitted at the termination hearing she last used marijuana and cocaine less than three weeks before the hearing. She testified she used cocaine as many as eight to fifteen times per day while the termination proceeding was pending, and

supported her addiction at least in part by engaging in prostitution. Lathalia voluntarily readmitted herself to a drug treatment facility, but walked away from the program against medical advice less than sixty days before the termination trial. Her failure to complete the program and to maintain sobriety constituted noncompliance with the case permanency plan adopted by the district court in December of 1998. Lathalia also failed to provide regular urine samples after February of 1999, in violation of the case permanency plan. She admitted at the termination trial she was not able to assume care and custody of her three children. Lathalia testified:

And before I can take my kids – no, it's not right for my kids to have to wait. But I have to get myself together, because I'm no good to my kids right now. If I had my kids, I mean, how would I be supporting them? I don't have a job. I would have a drug habit. I wouldn't be able to take care of my kids the correct way that they should be taken care of. I have to get myself together, and I don't know how long that's going to be. I can't put a time limit on that.

Lathalia estimated her incarceration and drug treatment would prevent her from providing care for the children for approximately six months after the termination trial, and requested the court enter a permanency order allowing her that much additional time to regain custody of the children.

On September 8, 1999, the district court entered an order terminating Lathalia's parental rights to Keishawnua and Nakia pursuant to Iowa Code section 232.116(1)(c), (d), (e); and terminating Lathalia's parental rights to LaShawntay pursuant to Iowa Code section 232.116(1)(c), (d), and (g). The district court also terminated the parental rights of Nakia, the father of Keishawnua and Nakia. The court continued the termination action with respect

to the rights of Kendall, LaShawntay's father. Neither father has appealed and consequently, their rights are not at issue here.

Lathalia appeals claiming the district court abused its discretion by: (1) denying her request for a continuance of the termination hearing; and (2) terminating her parental rights while the children were placed with a relative.

II. Standard of Review. We review the evidence in termination proceedings de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). We give weight to the trial court's findings of fact, especially those regarding the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). We review a ruling on a motion for continuance under an abuse of discretion standard and will only reverse if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996).

III. The Merits.

A. Lathalia's Request For a Continuance. Lathalia made her motion for continuance on the day of trial. By that time, the children had been removed from her custody for more than fourteen months. Lathalia's testimony made it clear there was no reasonable prospect for her to resume custody for at least six months because she was incarcerated for a parole violation and in need of treatment for addiction to illegal drugs. Our supreme court has made the following observations about delays in achieving permanent placements for children:

There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless

passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process.

- The law nevertheless demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills. In view of this required patience, certain steps are prescribed when termination of the parent-child relationship is undertaken under Iowa Code chapter 232. But, beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children.

In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

Under the circumstances of this case, the district court did not abuse its discretion by refusing to grant a continuance to Lathalia. Her recent history of drug abuse, prostitution, and general failure to comply with the terms of her probation gave the district court little reason to believe a further delay of the adjudication would serve a useful purpose. We adopt as our own the district court's finding Lathalia was no closer to regaining custody of her children at the time of trial than she was when they were removed on April 8, 1998.

Lathalia points out Kendall's motion for a continuance of six months was granted. However, the district court appropriately distinguished Kendall's circumstances from those of Lathalia. Kendall had only recently learned of the whereabouts of LaShawntay. He was fully employed in the Houston, Texas, area and had not received family preservation services as of the time of trial. Lathalia's assertion her motion should have been treated the same as Kendall's is without merit. Accordingly, the district court did not abuse its discretion by denying Lathalia's request for a continuance.

B. Termination Notwithstanding Placement With Relatives. Lathalia contends termination was improper in this case because the three children had been placed in the custody of relatives. The juvenile court need not terminate parental rights if a relative has legal custody of the children. See Iowa Code § 232.116(3) (1999). Our supreme court has clearly held this does not mean the court is precluded from terminating parental rights whenever custody is placed with a relative. *In re L.P.*, 370 N.W.2d 839, 843 (Iowa App. 1985). The district court properly exercised its discretion to terminate Lathalia's parental rights in this case not only because of her proven inability to put her children's interests ahead of her own, but also because of her inability to get along with the relatives with whom the children had been placed. Thus, we affirm the district court's order.

AFFIRMED.