

IN THE COURT OF APPEALS OF IOWA

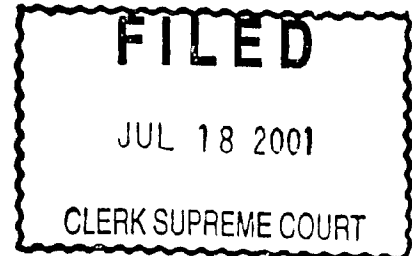
No. 1-396 / 01-0028

Filed July 18, 2001

IN THE INTEREST OF K.K.P., J.A.M., and C.M.P.,
Minor Children,

M.P., Mother,
Appellant,

K.B., Father of K.K.P.,
Appellant.



Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her three children. The father of K.K.P. appeals the termination of his parental rights.

AFFIRMED ON BOTH APPEALS.

Elizabeth A. Rosenbaum, Sioux City, for appellant-mother.

Joseph Flannery, Le Mars, for appellant-father of K.K.P.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, Thomas Mullin, County Attorney, and Michele Lauters, Assistant County Attorney, for appellee-State.

Michelle Dreibelbis of the Juvenile Law Center, Sioux City, for minor children.

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

MAHAN, P.J.

The respondent, Sheila Dickes, appeals from a district court order awarding split physical care of the parties' two children. She maintains she should have been given physical care of both children. We affirm.

Background Facts and Proceedings. Sheila Dickes and Jeremiah Grosvenor are the parents of two children, Kailee, born in October 1995, and Desrai, born in September 1997. Sheila and Jeremiah met in the summer of 1994, when she was twenty-one and he was fourteen. The two started dating shortly thereafter. Jeremiah, age sixteen, quit school and was living with Sheila in low-income subsidized housing when Kailee was born in October 1995. At that time, and at the time of trial, Sheila's eldest child, David, lived with his legal guardians, Sheila's parents.

In March 1996, Sheila moved to Denver, and Jeremiah and Kailee moved in with Jeremiah's mother. A few months later, Jeremiah and Kailee moved to Denver, where they lived with Sheila until February 1997. Jeremiah and Kailee returned to live in South Sioux City, Nebraska. Sheila followed shortly thereafter. Sheila and Jeremiah saw each other off and on, but were no longer in a romantic relationship. Kailee continued to live with Jeremiah.

In September 1997, Sheila gave birth to the parties' second child, Desrai. Jeremiah first learned of Desrai's birth by reading about it in the newspaper. He did not see Desrai until January or February of 1998. Sheila did not see Kailee during this period of time.

exercised some supervised visitation. Visitation was suspended in February 2000, because Mellissa refused to comply with case plan requirements. After a permanency hearing in July 2000, the court ordered the state to initiate termination proceedings regarding all three parents. The petition alleged termination of Mellissa's and Brad's parental rights was proper on the statutory grounds in Iowa Code sections 232.116(1)(b), (c), (d), and (g). It alleged grounds for termination of Keith's parental rights under Iowa Code sections 232.116(1)(b), (c), and (d). Keith was released from prison into a work release program after the petition was filed.

Termination proceedings

After hearings in early November 2000, the court terminated the parental rights of Mellissa and Brad under the Iowa Code sections pled. The court terminated Keith's parental rights under Iowa Code sections 232.116(1)(b) and (c), but corrected (c) to (d) by *nunc pro tunc* order.

Appellate claims

Mellissa. She claims there was not clear and convincing evidence to support termination on any of the statutory grounds determined by the court. Mellissa argues she did not abandon her children, but rather, DHS suspended visitation in February 2000, and refused her repeated requests to have it reinstated. Concerning continued adjudicatory circumstances, she argues both DHS refused to offer services designed to correct the circumstances which led to the children's removal and she has achieved stability now and the adjudicatory circumstances no longer exist. Concerning significant and meaningful contact,

Mellissa argues DHS prevented her from maintaining contact by suspending visitation and refusing to reinstate it. Concerning section 232.116(1)(g), Mellissa claims she has changed and DHS did not demonstrate the children could not be returned to her care as provided in Iowa Code section 232.102.

Keith. He claims there was not clear and convincing evidence he abandoned Keyana. He argues he did everything he could while in prison – complying with the case permanency plan, sending cards and letters, and providing financial support. He also claims the court erred in finding clear and convincing evidence he had not maintained significant and meaningful contact with Keyana. He cites the cards and letters he sent, the financial support he provided, and the visitation with Keyana done by his wife. He argues he was not given any opportunity to do more. See Iowa Code § 232.116(1)(d)(3).

Discussion

The scope of review in termination cases is de novo. See *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). In assessing the adequacy of proof by the clear and convincing evidence standard, we apply our other legal principles as guides. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Our primary concern is the best interest of the child. *In re R.L.F.*, 437 N.W.2d 599, 600-01 (Iowa Ct. App. 1989). 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). When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to

terminate under one of the sections cited to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999); *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

Mellissa. Her unwillingness to sever her dysfunctional relationship with Brad has been the source of many of her problems. He refused to comply with case permanency plan requirements. When he moved to South Carolina, Mellissa left the children with her mother and moved there to live with him. After the January 2000, review and permanency hearing, the court directed the State to begin termination proceedings concerning Brad. It also ordered Mellissa's visitation be suspended if she continued to have contact with Brad. Yet within a week, they were living together. DHS suspended visitation. From that point on, Mellissa refused to cooperate with service providers because she thought it was unfair to have her visitation suspended.

Section 232.116(1)(d). The actions cited by the court as abandonment support termination for failure to maintain significant and meaningful contact and failure to make reasonable efforts to resume care of the children. Mellissa argues she was not given the opportunity to maintain contact or resume care because visitation was suspended. She ignores the bases for the suspension – her refusal to participate in services or to stop having contact with Brad. Clear and convincing evidence supports termination on this ground.

Section 232.116(1)(c). The court concluded:

While some circumstances which led to the original adjudication may have changed, Mellissa, through her own choices and actions, has created a new set of circumstances which prevent a return of the children to her care at this time or any time in the near future.

The original adjudication was under Iowa Code sections 232.2(6)(b) (abuse or neglect) and (c)(2) (lack of supervision). Mellissa's employment and housing alleviate some of the original concerns. Her continued immaturity as seen in her poor choices and continued contact with Brad and his family as well as her failure to cooperate with services designed to improve her parenting skills demonstrate not all the original circumstances have changed. We affirm the termination on this ground.

Section 232.116(1)(g). Termination on this ground only relates to the two younger children. The State did not plead section 232.116(1)(e) concerning Keyana. Although Mellissa had made some positive changes in her life during the pendency of this case, the evidence shows there is still the risk of harm which would support the children's adjudication as being in need of assistance. That risk supports affirming the termination on this statutory ground.

Keith. He had no relationship with Keyana before his arrest and subsequent imprisonment. While in prison he sent cards and letters through appropriate channels, although DHS stopped sending them to the foster family once termination was being pursued. He sent half his earnings in prison as support for Keyana. The case worker testified Keith did everything asked of him and successfully completed all requirements in the case permanency plan and court orders. He also testified no services to promote reunification were offered or would be offered now that Keith has been released from prison. Because of the nature of his offense, Keith would not be permitted to live in the same

household as Keyana until October 2001, unless he had the approval of the court, DHS, the sexual offender treatment program, and the Board of Parole.

Section 232.116(1)(d). Keith had no real relationship with Keyana before his arrest and imprisonment. Despite all his actions while in prison, he cannot show he has established and maintained a place of importance in Keyana's life. See Iowa Code section 232.116(1)(d)(3). The general rule is unavailability to parent as a result of being incarcerated is no excuse. *R.L.F.*, 437 N.W.2d at 602. An incarcerated parent must take full responsibility for the conduct which has resulted in his confinement. See *In re J.S.*, 470 N.W.2d 48, 51 (Iowa Ct. App. 1991). The court correctly concluded it could not "preserve in law a relationship which no longer exists in fact." We affirm the termination of Keith's parental rights on this ground:

Summary

We affirm the termination of Mellissa's parental rights to Jordan and Chase under Iowa Code sections 232.116(1)(c), (d), and (g) and to Keyana under section 232.116(1)(c) and (d). We affirm the termination of Keith's parental rights to Keyana under section 232.116(1)(d).

AFFIRMED ON BOTH APPEALS.