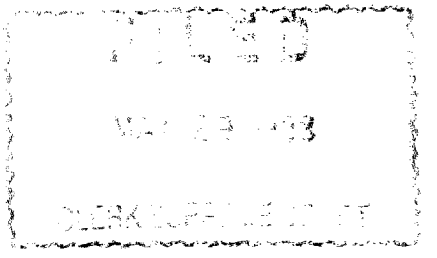
IN THE COURT OF APPEALS OF IOWA

No. 8-243 / 97-1973
Filed May 29, 1998



IN THE INTEREST OF S.D., Minor Child,

STATE OF IOWA,
Appellant,

S.D., Minor Child,
Appellant.

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

The State and minor child appeal a juvenile court ruling dismissing the State's petition to terminate the parental rights of the child's mother. **REVERSED.**

Kathryn Miller, Youth Law Center, Des Moines, for appellant minor child.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, and Michael B. Oliver, Assistant County Attorney, for appellant State.

Douglas R. Smalley of Reimenschneider, Rydell & Smalley, Des Moines, for appellee mother.

Considered by Cady, C.J., and Huitink and Vogel, JJ. Sackett, J., takes no part.

HUITINK, J.

Betty is the mother of Sarah, who was born in August 1988. Betty is an adoptive mother, having adopted Sarah in 1990. The State and guardian ad litem appeal the decision of the juvenile court refusing to terminate Betty's parental rights. We reverse the decision of the juvenile court.

Betty had polio as a child and presently has cerebral palsy. She is confined to a wheelchair. Betty is also legally blind.

Betty was a licensed foster parent. Sarah was placed in Betty's care shortly after her birth. Both of Sarah's parents have schizophrenia and they were unable to care for her. Her parent's medical history makes it more likely Sarah may develop schizophrenia. The Department of Human Services (DHS) had problems finding a permanent placement for Sarah and approached Betty to see if she was interested in adopting Sarah. After a screening process which involved a parental evaluation and a psychological evaluation, Betty was permitted to adopt Sarah.

Sarah began to develop behavioral problems. She was diagnosed with attention deficit hyperactivity disorder and was placed on medication. When Sarah started school, Betty worked with her teachers on her behavioral problems.

In October 1994, Betty had surgery. She sent Sarah to live with her sister in Arizona while she recuperated in a nursing home. Betty's sister became unable to care for Sarah and she was returned to Iowa. Betty then had friends care for Sarah. Sarah was sexually abused while in the care of these friends. In May 1995, Betty

agreed to place Sarah in foster care. Sarah was adjudicated to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(j).

In June 1995, DHS approved funding for Betty to hire a live-in aide so she would be able to return to her home. Betty hired Janice. DHS required Betty to participate in services before Sarah would be returned to her care. Betty had supervised visitation twice each week. At one visit each week a family therapist would be present. At the other visit a foster care caseworker was present.

By the time Sarah was placed in foster care her behavioral problems had escalated. Sarah was hospitalized for a few days in August 1996 for her emotional problems. She has been given an additional diagnosis of post-traumatic stress disorder. Sarah participates in individual therapy.

Betty initially cooperated with services, including family therapy. She had a new parenting evaluation in October 1995. Betty began to participate in individual therapy in March 1996. Betty did not, however, take recommended special education classes which would help her address Sarah's problems.

Betty's live-in aid, Janice, was fired by DHS in May 1996 because she commingled funds with Betty. There were also concerns because Janice's child had been removed from her care by DHS. Betty was informed Janice could not be present at visitation and Sarah could not be returned to her care if Janice was in the home. Janice has continued to live with Betty, and they still commingle funds.

Visitation was suspended in July 1996 on the recommendation of Sarah's therapist, who believed visits were difficult for Sarah. Sarah had become increasingly reluctant to attend visits. At visits, Betty showed affection to Sarah, but Sarah did not show affection to Betty.

In September 1996, the State filed a petition to terminate Betty's parental rights pursuant to section 232.116(1)(e). The juvenile court entered an order denying the petition to terminate parental rights. The court found Sarah could not be returned to Betty at the present time. The court found, however, the services provided in this case did not make reasonable accommodation of Betty's disabilities or Sarah's special needs. The court concluded the factual allegations in the petition had not been proven and it was not in the child's best interests to terminate parental rights. The matter of permanency was continued for six months and DHS was ordered to provide additional services to Betty and Sarah. The State and the guardian ad litem each appealed.

I. 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 child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Appellants contend the State proved, by clear and convincing evidence, all of the elements of section 232.116(1)(e). This section requires the State to prove:

(1) The child is four years of age or older.

> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided by section 232.102.

Iowa Code § 232.116(1)(e).

At the time of the juvenile court's ruling Sarah was nine years old. She had been adjudicated a child in need of assistance. Sarah had been in foster care for more than two years.

The juvenile court found Sarah could not be returned to Betty's custody at that time. We find there is clear and convincing evidence to support this finding. While out of Betty's care, Sarah had developed severe behavioral difficulties. Betty was no longer able to meet Sarah's special needs and was not interested in accepting services to allow her to better meet those needs. We conclude the State proved, by clear and convincing evidence, the statutory requirements for termination found in section 232.116(1)(e).

III. The juvenile court found the services offered in this case did not make reasonable accommodation to Betty's disabilities or Sarah's special needs. The court determined DHS should offer additional services to Betty.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *E.K.*, 568 N.W.2d at 831. Under section

232.102(7), DHS must make reasonable efforts to provide services to eliminate the need for removal. *In re A.B.*, 554 N.W.2d 291, 294 (Iowa App. 1996).

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). Parents have an obligation to demand services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993). Services should be challenged when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

Appellants claim Betty failed to challenge services prior to the termination hearing. We find no evidence in the record to show Betty challenged the case plan when it was entered. We determine this issue should not have been considered at the termination hearing.

IV. The juvenile court found termination was not in Sarah's best interests. Appellants assert termination was in Sarah's best interests. They claim Sarah needs structure, stability, and support which Betty was not able to provide. Sarah has special emotional and behavioral needs.

We determine termination of Betty's parental rights is in Sarah's best interests. At the time the juvenile court entered its order in this case, Sarah had been in foster care for more than two years. As we have previously noted, when the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having

termination of parental rights promptly pursued. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). We must reasonably limit the time for parents to be in a position to care for their child because patience with parents can soon translate into intolerable hardship for the child. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1993). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa App. 1993).

At some point, the rights and needs of the child rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781. Sarah is at this point. We note no party has raised arguments concerning whether additional services for Sarah would allow her to reunite with Betty. We believe additional services would not help Sarah reunite with Betty. As Sarah's therapist testified, Sarah has moved on and has now bonded with her foster parents.

We determine the State adequately proved the statutory elements of section 232.116(1)(e). We also find termination would be in Sarah's best interests. We conclude Betty's parental rights should be terminated. We reverse the decision of the juvenile court.

REVERSED.