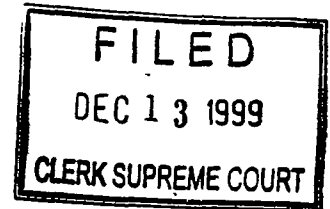


IN THE COURT OF APPEALS OF IOWA

No. 1999-312 (9-542) / 99-0501

Filed December 13, 1999



IN THE INTEREST OF T.M., Jr., Minor Child,

C.M., Mother,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

A mother appeals the juvenile court order terminating her parental rights to her son. **AFFIRMED.**

Nancy L. Burk, Toledo, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Chris Odell, Assistant Attorney General, and Terri Beukelman, Assistant County Attorney, for appellee-State.

Jeffrey E. Garland of Charnetski, Olson, Lacina & Garland, Grinnell, guardian ad litem for minor child.

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

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MAHAN, J.

A mother appeals the termination of her parental rights to her son. She claims the court erred in finding she deserted her child and the Department of Human Services (DHS) made reasonable efforts to reunify her with her child. We affirm.

Background. Troy Sr. and Carol met while patients in a psychiatric ward in Colorado, lived together for about two years, and married in November 1995. They have one child, Troy Jr., born October 11, 1995. Carol also has an older daughter who is not involved in this appeal. In early 1997, Carol lived in Brooklyn, Iowa with Troy Jr. In April 1997, Carol left Troy Jr. with friends from her church because she felt overwhelmed and incapable of caring for him. After five weeks, the friends wrote Carol, asking her to pick Troy up or they would contact DHS. On May 27, 1995, the court issued a temporary removal order and DHS placed Troy in foster care.

Carol left Brooklyn and moved in with her daughter in Newton. In July 1997, Carol enrolled in a residential drug and alcohol treatment program in Colfax called Teen Challenge. On September 5, 1997, the court adjudicated Troy in need of assistance under Iowa Code sections 232.2(6)(a), (b), and(j) (1997).¹ DHS did not

¹ These sections provide:

6. "Child in need of assistance" means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

....

j. Who is without a parent, guardian or other custodian.

know where Carol lived between April and December. Carol was discharged from Teen Challenge in December 1997 for noncompliance. She moved to a shelter in Des Moines. Carol requested a visit with Troy in December 1997, which occurred in January 1998.

In April 1998, Carol asked for another visit. Her caseworker told her she needed to complete a psychological evaluation before visitation would be allowed. The caseworker impressed on Carol the immediacy of the requirement because termination would be sought soon. Also in April, Carol refused to authorize a tonsillectomy for Troy, so court authorization was obtained.

By November 1998, Carol was employed and had a two-bedroom apartment in anticipation of being reunited with Troy. Carol had her second visit with Troy since May 1997. She requested another visit, but it was denied because the State was pursuing termination of her parental rights.

Termination proceedings. The State filed a termination petition on November 5, 1998. The termination hearing occurred in January 1999. In the more than nineteen months Troy had been out of her care, Carol had visited him only twice. She had not supported him. Her job was ending unless she relocated to Cedar Rapids, but she was undecided whether or not to relocate. She had only enough money to stay in her apartment another month. When asked why she had not sought to resume care of Troy or why she had not complied with requirements from DHS, Carol testified she was "overwhelmed." She testified she could not have Troy with her at Teen

Challenge or at the shelter. Her lack of visitation she attributed to lack of money and transportation to Grinnell.

The court terminated Carol's parental rights pursuant to Iowa Code sections 232.116(1)(b), 232.116(1)(d), and 232.116(1)(g). The court found Carol had problems caring for Troy, she had done nothing to demonstrate her ability to care for him, and she refused to accept DHS's offer of services. The court also terminated the father's parental rights, but they are not at issue in this appeal. Carol appeals.

Appellate review. We review proceedings to terminate parental rights de novo, reviewing the facts as well as the law and adjudicating parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7). When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d at 276.

Appellate claims. Carol claims the court erred in finding she had deserted Troy, arguing DHS refused her visitation requests and she was unable to visit while in a treatment program. She also claims the court erred in finding DHS made

reasonable efforts to reunify her with Troy because DHS failed to prepare a case permanency plan and to encourage consistent contact.

Discussion. Carol left Troy with friends and did not take him back even when threatened with DHS involvement. She did not contact DHS to provide her address until seven months after DHS involvement. Carol only visited Troy twice before the termination petition was filed, seventeen months after DHS removed Troy from Carol's friends' custody. She did not support Troy during the pendency of this case. Parental responsibilities include more than subjectively maintaining an interest in a child.

This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. . . . Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.

In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). In addition, Carol did not appeal the initial adjudicatory findings she abandoned or deserted Troy. We find clear and convincing evidence supports termination under Iowa Code section 232.116(1)(b).

Between the CINA adjudication in September 1997, and the termination hearing in January 1999, the court conducted a dispositional hearing in October 1997, a review hearing in May 1998, and a permanency hearing in October 1998. Carol did not attend any of the hearings. At the time of the dispositional hearing, Carol's location was unknown to the court and DHS. There never had been any contact between DHS and Carol before she requested a visit in December 1997. There was

no basis for establishing responsibilities and goals for her to promote reunification.

We do not find anything in the record to indicate Carol ever appealed from any of the earlier hearings, demanded services, or raised the case permanency plan issue before the termination hearing. While the State has the obligation to make reasonable efforts, the parents have a responsibility to demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges to the plan for reunification should have come when the plan was entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the service plan at the termination hearing. *See C.D.*, 508 N.W.2d at 101. This issue should have been raised earlier and we will not consider it now. *Id.*

AFFIRMED.