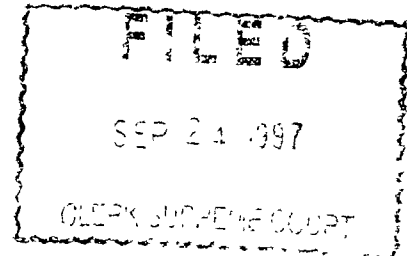


IN THE COURT OF APPEALS OF IOWA

000227

No. 7-321 / 97-0102  
Filed September 24, 1997



IN THE INTEREST OF B.N. and A.L., Minor Children,

G.L., Mother,

Appellant.

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

The mother appeals from the court order terminating her parental rights.

**AFFIRMED.**

Donna M. Humpal of the M.W. Liebke Law Office, Davenport, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,  
William E. Davis, County Attorney, and Gerda Lane, Assistant County Attorney, for  
appellee-State.

Stephen W. Newport, Davenport, guardian ad litem for minor children.

Considered by Cady, P.J., Streit, J., and Habhab, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

**STREIT, J.**

Gidget appeals the court order terminating her parental rights to Brittany and Alyssa. She argues the court erred in terminating her parental rights for neglect and abuse of her children. We affirm.

***I. Background & Facts.***

Gidget is the mother of three children, Brittany, age eight, Alyssa, age six, and Andrew, Jr., age two. Brittany's biological father is Dan. Alyssa and Andrew Jr.'s biological father is Andrew, Sr. In April 1994, as a result of founded reports of sexual abuse of Brittany by Andrew Sr., the court ordered Andrew not have contact with Brittany or Alyssa. One month later, Gidget allowed Andrew to have contact with Brittany and Alyssa.

In August 1994, the court adjudicated Brittany and Alyssa children in need of assistance (CINA) as defined in Iowa Code sections 232.2(6)(c)(2), 232.2(6)(d), and 232.2(6)(f) (1993). The basis for the adjudication was the sexual abuse of Brittany by Andrew necessitating specialized care and treatment for the girls. Further, Gidget failed to provide supervision of the girls or emotional support to them during therapy to deal with the sexual abuse. Gidget refused to believe Andrew had abused Brittany.

In November 1994, Brittany and Alyssa were placed in foster care and had only supervised visits with Gidget. In the fall of 1995, Gidget and her girls began unsupervised visits. The unsupervised visits triggered negative behavior in both girls,

including bed wetting, encopresis,<sup>1</sup> destructiveness, a startling increase in sexual overt behavior not complying with social norms, and defiant and oppositional behavior.

Gidget was provided over two years of public services to help her become an adequate parent to her girls. The services provided included individual therapy, parent skill development classes, one-on-one parent skill classes taught by a foster care caseworker, joint therapy sessions with Brittany, and supervised visitation. Gidget's neglectful parenting continued despite the provision of these services.

The juvenile court terminated Gidget's visitation rights on September 30, 1996, after concluding visitation was not emotionally supportive or consistent with the children's progress and therapy. In September 1996, the State filed petitions for termination of the parental rights of Gidget, Andrew, and Dan. On December 20, 1996, the court, following a hearing, terminated Gidget, Andrew, and Dan's parental rights pursuant to Iowa Code section 232.116(c). Gidget appeals.

## ***II. Scope of Review.***

Our review of termination of a parent-child relationship is de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *Id.*

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<sup>1</sup> Involuntary defecation of psychic origin.

**III. Termination of Gidget's Parental Rights Under Section 232.116(1)(c) of the Iowa Code.**

The primary concern in a parent-child termination hearing is the best interests of the child. *Dameron*, 306 N.W.2d at 745. The court in *Dameron* stated:

In determining the best interests of the child, the court looks at the child's long-range, as well as immediate interests. The court also looks to see what the future holds for the child should he be returned to the home. To determine what the future holds, evidence from the parent's past performance is looked at, for that performance may be indicative of the quality of care the parent is able to give in the future.

*Id.*

Terminating parental rights is a last resort. *In re S.O.*, 483 N.W.2d 602, 604 (Iowa 1992). There must be clear and convincing evidence presented to support the allegations of the termination petition. *In re B.K.J., Jr.*, 483 N.W.2d 608, 610 (Iowa App. 1992). Parental rights can be terminated under section 232.116(1)(c) if the court finds the following:

- (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as a result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.  
and
- (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

A child cannot be returned to the custody of a parent when it is proven by clear and convincing evidence that a parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child. *See B.K.J., Jr.*, 483 N.W.2d at 610.

Brittany was sexually abused by Andrew. Brittany and Alyssa were found children in need of assistance in August 1994 as a result of this sexual abuse. After the court adjudicated the children to be in need of assistance, Gidget received services to correct the circumstances. Despite the services, Gidget's parenting remains neglectful and may lead to the abuse of the girls. The children cannot now be returned to her.

While and after the services were being provided, Gidget continued to display irresponsible and neglectful parenting behavior. During an unsupervised visitation, Gidget let her girls watch her teenage friends snort aerosol cans. On another visit, Gidget was playing poker for cigarettes with teenagers. Gidget had her boyfriend stay the night when the girls were over for unsupervised visits, and at one point she locked Brittany out of her bedroom. Gidget allowed men who were drinking alcohol to be at her residence while the girls were there for visitation. She allowed her father, who she knew had a liking for young girls and suspected as an abuser of her girls, to have contact with the girls while visiting. Gidget allowed this contact despite the obvious fear the girls displayed in the presence of Gidget's father.

During one supervised visit Brittany broke a picture frame and Gidget did not pick up all the glass. Brittany amused herself playing in the glass. During this same visit Andrew climbed into the stove. He also played with the stove's burners. In June 1996, Gidget allowed her boyfriend, Mike, to babysit Andrew even after she had expressed concerns about Mike's interaction with Andrew. Mike physically abused Andrew while babysitting him. Gidget was named a perpetrator in a founded child abuse report of Andrew.

Gidget cannot control Brittany's behavior. While Brittany and Alyssa were staying with Gidget during unsupervised visitation Gidget had Brittany and Alyssa sleep in the same bed. Brittany inappropriately touched Alyssa during the nights they slept together. Brittany's conduct, as well as the other conditions in Gidget's home, resulted in Alyssa's fear of visitation with Gidget. Alyssa became withdrawn and isolated following visitation and begged her foster parents not to take her there.

These facts demonstrate Gidget's inability to provide a safe home to her girls. Despite the fact Gidget has been provided a wealth of services to aid her in developing her parenting skills, Gidget's parenting is neglectful and may lead to the further abuse of her girls. Gidget is unable to provide Brittany and Alyssa the support, supervision, and protection they need. We conclude the juvenile court was correct in determining it was in the best interests of Brittany and Alyssa to terminate Gidget's parental rights pursuant to Iowa Code section 232.116(1)(c).

***IV. Termination Pursuant to Iowa Code Section 232.116(1)(h)(1).***

A court may terminate a parent's rights under Iowa Code section 232.116(1)(h)(1) if the following elements are proven:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
- (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

The record shows it is unlikely further services will correct the conditions in Gidget's home and parenting style, which led to the abuse of Brittany, within a reasonable time. The receipt of services up to this point has not corrected the conditions. Gidget received supervised visitation with her children, attended parenting classes through DHS, and had individual therapy . Services were provided for over two years. She has been unable to apply the skills taught in the services.

Further, it is the opinion of numerous service providers that Gidget's need for psychological therapy and parenting classes will continue for an unknown length of time. One service provider estimated it could take up to five years for Gidget to have the ability to be an adequate parent to Brittany and Alyssa.

Even if Gidget were provided continued services, the threat of probable harm to her children is likely. This threat of probable harm justifies termination of her

parental rights, even if the perceived harm is different than the harm which prompted the removal of the child from the home. *See In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Although Brittany is no longer being abused by Andrew, there are new threats which justify termination of Gidget's parental rights. Gidget has a pattern of involving herself with and exposing her girls to abusive men.

Because we find continued services would not correct the potentially harmful conditions which exist in Gidget's home or correct Gidget's neglectful parenting style, termination of her parental rights pursuant to Iowa Code section 232.116(1)(h)(1) was justified.

***V. Should Alyssa Be Returned to Gidget's Custody?***

Gidget argues the court return only Alyssa to her custody. The evidence in the record shows returning Alyssa to Gidget's care is not in Alyssa's best interests. Based on the same statutory grounds and facts discussed above, terminating Gidget's parental rights to Alyssa is justified. Further, when a parent fails to exercise a reasonable degree of care in supervising her child, it is not in the child's best interests to return her to that home. *See* Iowa Code § 232.2(6)(c)(2). Gidget has exposed both children to the risk of harm several times, despite having knowledge of the harm.

Alyssa has been with her present foster family for two years. She has grown attached to them. Alyssa rarely talks about Gidget. The foster parents give Alyssa emotional support, protection, and supervision. To take Alyssa from the stability of

her foster home would be a set back to her. The juvenile court was correct in terminating Gidget's parental rights to Alyssa.

**VI. Conclusion.**

Brittany and Alyssa have been without permanence in their lives too long. They have been in foster care for over two years. A child should not have to endlessly suffer the parentless limbo of foster care, *In re S.N.*, 500 N.W.2d 32, 35 (Iowa 1993), or wait while their parents experiment with their parenting skills. See *In re M.B.*, 553 N.W.2d at 346.

Brittany and Alyssa's foster parents are willing to adopt them if Gidget's parental rights are terminated. Brittany and Alyssa's long-range interests will best be served by terminating their parent-child relationship with Gidget, thereby affording them the advantage of suitable adoption. *In re S.N.*, 500 N.W.2d at 35. Accordingly, we affirm the order of the juvenile court's termination of Gidget's parental rights to Brittany and Alyssa.

**AFFIRMED.**