

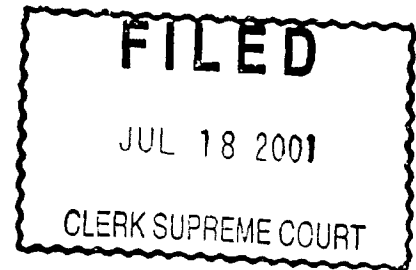
IN THE COURT OF APPEALS OF IOWA

No. 1-397 / 00-1080

Filed July 18, 2001

IN THE INTEREST OF S.C.P., a/k/a S.C.J.,
Minor Child,

M.C.P., Mother,
Appellant,



Appeal from the Iowa District Court for Jefferson County, William S. Owens, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her minor child.

AFFIRMED.

Edward F. Noyes, Fairfield, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Patrick J. McAvan, County Attorney, for appellee-State.

Benny Waggoner, Fairfield, for minor child.

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

ZIMMER, J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her minor child. She claims the court improperly emphasized her mental disability in terminating her parental rights. She also claims the court did not adequately consider the availability of community support to assist her in caring for her child. We affirm on appeal.

Mary and Brian are the parents of Shanta, born in August 1998. At the time of Shanta's birth, Mary was committed to a residential care facility for mental health treatment and she was unable to care for the child. She was diagnosed with schizoaffective disorder, bipolar type. Mary has also been treated for disassociative identity disorder, or multiple personalities. Shanta was placed in foster care. Shanta was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n).

Mary was discharged from the residential care facility in November 1998. She moved in with Brian, even though their relationship involved domestic violence.¹ In February 1999, she voluntarily went to a mental health institute because she was experiencing insomnia, racing thoughts, and delusions she was a millionaire. She subsequently entered a residential care facility. In April 1999, Brian beat her with an axe handle. After some months of indecisiveness, she ended her relationship with him.

Mary began to live independently in June 1999, and had a period of relative stability for several months. She interacted appropriately with Shanta during supervised visits. By November 1999, however, Mary was stating she

¹ Brian was previously charged with domestic abuse assault for breaking Mary's nose.

had been the victim of satanic ritualistic abuse. She also stated that during telephone conversations with a therapist in California she was "healed" of at least 1000 personalities. In December 1999, Mary was again hospitalized for her mental health.

Beginning in February 2000, Mary began another period of stability. Shanta, however, became emotionally distressed by visits. Shanta's foster parents have expressed an interest in adopting her.

Throughout the CINA case Mary had problems with consistency. She stated many times she would like to start a pie business or become a mental health therapist, but later began a practice in spiritual healing. At one time she told a social worker she was engaged, but a few weeks later that relationship had ended and she was pursuing a relationship with a different man. Mary had a close relationship with her mother for a long period of time, and blamed her father's abuse for causing her mental illness. Later, she became estranged from her mother and stated of her father, "he has such a good heart."

In February 2000, the State filed a petition to terminate the parental rights of Mary and Brian to Shanta. The juvenile court terminated the parents' rights under section 232.116(1)(g). The court stated:

It is undeniable that Mary [] loves her child and when mentally stable she provides Shanta with a safe and nurturing environment in which to visit. The evidence, however, shows that while Mary [] has made progress she still is not able to care for Shanta on an unsupervised basis. In addition, her history suggests that this progress may be short lived. Mary [] will continue to require mental health treatment in the future and it is unlikely she will make sufficient progress to permit Shanta to be returned to her care in the near future.

Mary appeals.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. SUFFICIENCY OF THE EVIDENCE

Mary asserts the State did not present sufficient evidence to justify termination of her parental rights. She states her mental illness, standing alone, is not sufficient reason to terminate her rights. Mary claims she did not have any problems caring for Shanta when she was mentally stable. She contends she should not be unduly prejudiced by the stigma of mental illness.

A parent's mental disability, while not alone sufficient to terminate parental rights, can be a contributing factor to the parent's inability to perform essential parenting functions, and termination can be appropriate where a parent lacks the capacity to meet a child's present and future needs. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993); *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995). The crucial question is not whether the parent, in a period of mental stability, is equal to the task of parenting. *In re K.F.*, 437 N.W.2d 559, 563 (Iowa 1989). The decisive question is whether the parent, if allowed to resume the child's care, would remain in remission and maintain a stable home. *Id.*

In the present case, the evidence shows Mary has periods of relative mental stability, but these are short-lived. The evidence does not show Mary is likely to remain in remission in the future and maintain a stable home for Shanta.

To the contrary, Mary will probably need continuing mental health care. Furthermore, aside from Mary's mental illness, there are concerns about Mary's participation in an abusive relationship with Shanta's father. There are also concerns about Mary's lack of consistency in her life. For all of these reasons, we determine Mary's parental rights were properly terminated under section 232.116(1)(g).

III. COMMUNITY SUPPORT

Mary contends the juvenile court did not consider her support system within the community. At the termination hearing, Mary presented the testimony of three friends, who stated they would be available to assist Mary in caring for Shanta, if she were returned to Mary's care. Mary proposes that we adopt a new test which takes community support into consideration:

1. The biological parent is desirous of having custody of her child returned, and
2. is capable of providing the physical, emotional and spiritual needs of a child on her own, or
3. has available to her a support structure of committed individuals, with proven parental skills, that are desirous of supporting and are capable of supplementing, when necessary, the relevant needs of the child.

There are several problems with Mary's proposal. First, section 232.116(1)(g)(4), requires the State to show "the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time." Thus, we consider whether the child can be returned to the parent, not whether the parent can arrange for a different custodial situation outside of juvenile court jurisdiction. Second, Mary did not bring up her proposal until the termination hearing. Mary's friends had not contacted DHS about being potential care-givers for Shanta. We find her proposal came too late in the process. Third, Mary's

therapist, Rebecca Andrews, testified Mary might be able to care for Shanta in about one year. Andrews was working with Mary on her disassociative identity disorder, helping her to map and contain her multiple personalities. Therefore, even if Mary's proposal were acceptable, it could not be implemented for another year. Shanta should not be required to wait any longer for permanency.

We affirm the decision of the juvenile court.

AFFIRMED.