

**IN THE COURT OF APPEALS OF IOWA**

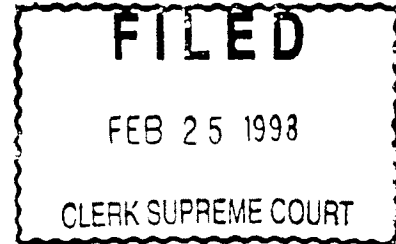
No. 7-790 / 97-0941

000207

**IN THE INTEREST OF M.M. and C.M.,  
Minor Children,**

**M.P., Mother,**

Appellant.



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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Judge.

The mother of two minor children appeals a district court ruling terminating her parental rights. **AFFIRMED.**

Kellyann M. Lekar of Randall, Griffin, Nelson & Hawbaker, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee.

Heidi L. Noonan-Day of Shinkle, Noonan-Day & Hulse, Cedar Falls, guardian ad litem for minor children.

Considered by Cady, C.J., and Sackett and Streit, JJ.

**SACKETT, J.**

A mother appeals the decision of the juvenile court terminating her parental rights to her children. She claims the State did not make reasonable efforts to prevent termination, there were not sufficient legal grounds for the termination, and termination was not in the best interests of the children. We affirm on appeal.

Maria and Dell are the parents of Mykel, born in January 1993, and Christopher, born in December 1993. Maria and Dell were never married. They separated in 1995.

The family came to the attention of the Department of Human Services in March 1996 when Maria was hospitalized for depression and suicidal thoughts. Prior to her hospitalization, Maria had been living with the children in a shelter for battered women. The children were placed in foster care and found to be children in need of assistance.

Maria and Dell were ordered to participate in family therapy and parent skill development services. They were required to obtain a substance abuse evaluation and treatment if necessary. Maria was also directed to outpatient mental health treatment. The court noted the parents would benefit if they had stable employment, budgeted their money, and had assistance in obtaining housing. The court did not, however, order these services be provided. Maria and Dell were granted supervised visitation. Maria's mother, Tina, was permitted unsupervised visitation.

Maria has been diagnosed as having major depression. She was placed on medication at the time she was discharged from the psychiatric hospital in April 1996. Maria did not continue to take the medication. She did not participate in recommended outpatient treatment.

Maria initially made good progress in completing ordered services. She moved in with her aunt, got a job, and was able to buy a car. She attempted to rent a low-income housing unit. Maria improved her parenting skills. Maria was adamant, however, that she did not want to join support groups but wanted to make improvements on her own.

Maria was not admitted to a transitional housing program because she was interested in housing and not the counseling which was part of the transitional housing program. Maria was encouraged to apply at the House of Hope, a supervised group home. Maria was not interested in this program because she did not want supervision. She refused to return to the shelter for battered women, even when the Department of Human Services indicated it would recommend the return of her children if she did.

Maria had a substance abuse evaluation in August 1996. The evaluation found she had what was termed a "substance abuse dependency," but at the time Maria was not using substances. It was again recommended Maria join a support group but she declined.

By September 1996, Maria had a relapse. She again drank alcoholic beverages. She left the home of her aunt without telling the Department of Human Services where she was living. She quit her job. She spent more time with Dell, who continued to have problems with substance abuse. She did not visit the children from September 1996 until January 1997.

In January 1997, the Department of Human Services learned Tina was arrested in September 1996 for selling methamphetamine from her home. Maria entered a residential treatment program for substance abuse, which she successfully completed in March 1997. She did not complete an aftercare plan.

In January 1997, the State filed a petition to terminate the parental rights of Maria and Dell. At the time of the termination hearing, Maria was employed. She was living with her brother, who was on probation following his conviction on drug charges. She had only been to one aftercare meeting since leaving the residential treatment program. She admitted if the children were returned to her, Dell would expect to see the children whenever he wanted.

The juvenile court terminated the parental rights of Maria and Dell to Mykel under Iowa Code section 232.116(1)(e)<sup>1</sup> and to Christopher under section 232.116(1)(g).<sup>2</sup> Only Maria has appealed.

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<sup>1</sup> Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

- (e) The court finds that all of the following have occurred:
  - (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 in section 232.102.

Iowa Code § 232.116(1)(e) (1997).

<sup>2</sup> Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

- (g) The court finds that all of the following have occurred:
  - (1) The child is three years of age or younger
  - (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
  - (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(g).

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).

Maria contends the State did not engage in reasonable efforts to reunify the family. She claims the Department of Human Services failed to prepare a relevant and reasonable responsibility list in the case permanency plan. She further contends the Department also failed to determine whether she had met the responsibilities listed in the plan.

Maria admits she did not raise these issues in the juvenile court. Parents should demand additional or other services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993). Maria contends we should address her challenge to the State's failure to provide reasonable accommodations to preserve the family unit because her attorney was not effective in failing to advance the issue at the termination hearing. We recognize the services offered did not solve Maria's problems. Maria could have done more, but we also need to ask ourselves if greater efforts could not have been made to tailor the programs to Maria's needs. Maria does not point to specific services which she claims the State should have offered to assist her in regaining the custody of her children. Consequently, we cannot assess her claim on this record.

Maria also contends the State has failed to show by clear and convincing evidence the children could not be returned to her care. On our de novo review, giving weight to the credibility assessment made by the juvenile judge, we find clear and convincing evidence the children could not be returned to Maria's care at the present time. Maria did not do anything to address her mental health problems after she was released from hospitalization. Maria did attend a residential treatment program for her substance abuse or alcohol problems, but had not developed an aftercare treatment program. She had only attended one AA meeting since she left the residential treatment program. Maria did not attend any counseling or groups to address her domestic abuse problems. She testified she was no longer involved with Dell. However, she also testified if she received custody of the children, he would expect to be able to see the children, which seems to show some level of continued involvement between Maria and Dell. Janet Wood, who provided counseling and parent skill development sessions to Maria, testified it would probably take Maria another year before she would be able to care for the children. The statutory dictates of sections 232.116(1)(e) and (g) as grounds for termination were met.

Maria claims termination is not in the best interests of the children. The bond between Maria and the children was not particularly strong. The children were two and three years of age when they were first put into foster care and did not have extensive memories of life with their parents.

Legally severing biological ties is not done without some risk to children, but it must be weighed with the risks of maintaining the family unit. An adoption specialist said the children are considered to be very adoptable. There is no other evidence of the State's plans for the children's future. We cannot assume the children will have a successful adoptive placement or that Maria will not mature in a year and be a responsible parent. The inability of the State to assist high risk parents retain parental rights has resulted in a number of children orphaned by termination.

The State advances these children will have a better life away from their birth parents. In affirming this termination, we must assume the State will deliver on their promise of a better life for Mykel and Christopher. Giving credence to the findings of the juvenile court on this issue, we affirm.

**AFFIRMED.**