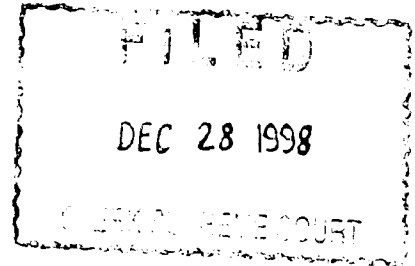


IN THE COURT OF APPEALS OF IOWA

No. 1998-4 (8-675) / 98-1253

IN THE INTEREST OF E.C., T.C., and S.H.,
Minor Children,

L.F., Mother,
Appellant.



Appeal from the Iowa District Court for Dickinson County, David C. Larson,
District Associate Judge.

The mother appeals from a juvenile court order terminating her parental rights.

AFFIRMED.

Larry A. Stoller, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, for appellee-State.

Shannon L. Sandy of the Sandy Law Firm, P.C., Spirit Lake, guardian ad litem
for minor children.

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

PER CURIAM

The mother, Laura, appeals the juvenile court order terminating her parental rights. She alleges the court erred in finding she is unable to meet the needs of her children and in finding clear and convincing evidence the children could not be returned to her custody. She also asserts her due process rights were violated for failure to give her adequate notice of the actual basis for the termination of her parental rights. We affirm.

Laura has three children born to two different fathers: Elisa C., born in December 1988, Tristie C., born in July 1990, and Sarah H., born in August 1993. The father of Elisa and Tristie was incarcerated at the time of the termination. Sarah's father consented to the termination of his parental rights. Neither biological father has appealed.

A petition asking the children be found to be children in need of assistance was filed in February 1996. The petition alleged the children were being physically abused by Laura's ex-boyfriend and they remained at risk. The children were removed from Laura's custody and found to be in need of assistance in March 1996. The children have remained in foster care since that date.

The Department of Human services provided Laura with parenting, communication, and problem-solving skills; techniques for managing difficult behavior; and techniques for caring for special-needs children. Laura exercised supervised visitation with all three children. In August 1997, Laura married Clint,

who is not the biological father of any of her children. Clint has visitation with his son from a previous marriage.

Laura and Clint both have had problems with substance abuse. An assessment termed "focused-family assessment" was done in September 1997. After receiving the results of the assessment in late October recommending termination, the Department's goal changed from reunification of the family to termination of the children's parental rights.

The State petitioned to terminate Laura's parental rights under Iowa Code sections 232.116(1)(c), (d), (e), (h), and (k). Evidence before the court showed each of the three children has special needs requiring above-average parenting skills. Elisa has a learning disability, has been physically abused, and suffered from depression and post-traumatic stress disorder. She is a very controlling child. Tristie is mildly mentally challenged and has attention-deficit hyperactivity disorder and suffers a post-traumatic stress disorder. Sarah is defiant and aggressive. Laura admitted she is not certain she ever will be ready to have custody of all three children at one time. She asked the court to allow the children to remain in long-term care with relatives until she gradually is able to care for each of the children.

Various witnesses testified the children are adoptable and need permanence and structure, and long-term foster care or care by relatives would not be in the children's best interest. Sandra Jacobsma, an adoption specialist for the Iowa Department of Human Services, testified as follows:

Q. The case that we're here on today involves three girls, . . . what we want to know from you is if the Court decides to terminate their parental rights whether these particular girls are adoptable. Have you been asked to make an assessment of the adoptability of these particular girls? A. Yes, I have.

Q. After gathering . . . information, do you have an opinion in this case as to whether these particular girls are adoptable? A. Yes, I do.

Q. And what opinion is that? A. That they are adoptable.

Q. Can you elaborate on that at all? A. Okay. I think that you have four -- or three children here that do have special needs. But as I said, you know, most of the children that come into the Department of Human Services do have special needs. And these children don't exhibit needs that make them not adoptable. They have made progress in foster care throughout their stay. Their therapists, when I talked to the therapists, they both felt that the children were very adoptable also. So I think given my background in working with children that they don't exhibit behaviors that prevents them from being adopted.

Beverly Jean Saboe, a Clinical Nurse Specialist in Pediatrics at the University Hospital School and an Assistant Professor in the College of Nursing, testified as to relative placement of the children as follows:

Q. Did you get the opportunity, through your review of the records and through your interviews, to make an assessment as to whether placement with one or more of the grandparents would be beneficial in this case? A. We did interview one of the grandparents.

Q. Okay. What -- Do you have an opinion as to whether a grandparent placement would be an acceptable alternative for the children in this case? A. Yes.

Q. And what would that opinion be? A. Our -- my opinion was that grandparent placement would not be appropriate. There was a considerable length of time. I think the first founded child abuse report occurred in 1996 or something. For several years relatives in this family, including grandparents, were aware of the children -- that the children weren't being well taken care of, and we had no real evidence to suggest that anybody had made that known to people to intervene on behalf of the children. Also, there were reports in the records of I'm thinking one or another of the older two girls demonstrating behavioral and emotional reactions following visitation with a grandparent.

Marcia Stoever, a social work case manager with the Dickinson County Department of Human Services, testified as follows:

Q. One of the issues that has come up in this case is that there are various grandparents that have expressed interest in taking in these girls if they couldn't be returned to their mother's home. Does the Department see that as being a realistic possibility in this case? A. No.

Q. Why not? A. Well, two of the grandparents have been dishonest with me, I believe, in -- in their supervision of the children when they were with Laura. They didn't protect the girls their whole lives as far as reporting to anyone the concerns that were going on in the home prior to DHS getting involved. I don't think that the children would be apart from Laura if any one of them adopted them. She would always be in their lives. It wouldn't be realistic to think that she wouldn't be.

The court found Laura was a victim of abuse in January 1996 and before by her ex-boyfriend, resulting in depression. Her substance abuse was found to be under control at the time of the hearing. Laura either failed to follow through or failed to understand the services.

The juvenile court found Laura never adequately addressed the issues that led to the children's removal from her care. The juvenile court concluded clear and convincing evidence supported termination under Iowa Code section 232.116(1)(e).¹

¹ Iowa Code section 232.116(1)(e) provides:

1. 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

The juvenile court found it was in the best interest of the children to terminate Laura's parental rights so they might be placed for adoption. An adoption specialist testified the children were adoptable. The court found placing the children in some combination with their mother and grandmothers would not be appropriate, even though the children might be separated by adoption so their individual needs could be met.

We review terminations of parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Laura contends there is not clear and convincing evidence supporting termination. She advances while her parenting skills are not exemplary, she has made progress in improving her skills, she no longer uses drugs, she is a superior homemaker, and she is married to a gentle, supportive and good father. Laura says there is no evidence her children's learning disabilities or behavioral problems are a direct result of her conduct. She contends she is able to meet the needs of her children and the issues that led to their removal no longer exist.

The requirement of Iowa Code section 232.116(1)(e)(4) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance under section 232.2(6) exist. *In re A.M.S.*, 419 N.W.2d 723,

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).

725 (Iowa 1988); *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277. We find clear and convincing evidence definitional grounds exist under Iowa Code section 232.2(6)(b) and (f) because of the special needs of the children coupled with Laura's own needs and lack of skills. We affirm the juvenile court's decision terminating her parental rights.

Laura further alleges she was denied due process under two theories. First, she asserts the allegations in the termination petition gave her insufficient notice because the petition recited the literal language of the code without setting out a factual basis for the allegations. Second, she contends Iowa Code section 232.102, which is referenced in section 232.116(1)(e), is unconstitutionally vague on its face and as applied to her. Both of her arguments are untimely because they were not raised and adjudicated in the juvenile court. Matters not raised in the trial court, including constitutional questions, cannot be raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

AFFIRMED.