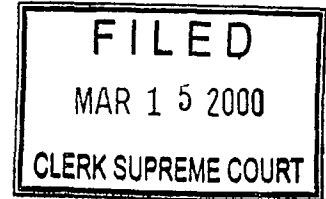


IN THE COURT OF APPEALS OF IOWA

No. 0-129 / 99-1610
Filed March 15, 2000



IN THE INTEREST OF S.C., Minor Child,
C.C., Mother,
Appellant.

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

A mother appeals the termination of her parental rights. **AFFIRMED.**

Lloyd E. Keith of Keith Law Firm, P.C., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Victoria Siegel, County Attorney, for appellee State.

Samuel K. Erhardt of Erhardt & Erhardt, Ottumwa, guardian ad litem for
minor child.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

Cyra C. appeals from the juvenile court order terminating her parental rights to her daughter Shannon C. We affirm.

I. Background Facts and Proceedings. Cyra is the mother of seven children: Marty, age unspecified; Sarah, born in 1985; Amber, born in 1992; Scotti, born in 1993; Jaimie, born in 1994; Shannon, born in 1996; and Kaitlyn, born in 1998. Cyra no longer has custody of any of them. Marty and Sarah were involved with juvenile proceedings which terminated when they were placed with their respective fathers. Cyra's parental rights to Amber, Scotti and Jaimie were terminated. She voluntarily terminated her parental rights to Kaitlyn in Missouri. This appeal involves only Shannon born in December of 1996. The parental rights of Shannon's father are not at issue in this appeal.

Cyra was imprisoned at age seventeen following a conviction of second-degree arson. She had started a fire at a business where she had been discharged from employment. She served six years of a ten-year sentence. Cyra has a long history of being unable to meet the basic needs of her children. She first came to the attention of the Iowa Department of Human Services ("DHS") in 1989 when she physically abused Sarah who was four at the time. Cyra tied Sarah's hands to her knees and slapped and spanked her, leaving bruises. A short time later, DHS found Cyra denied Sarah critical care by leaving her with a person whom Cyra believed had previously sexually abused Sarah.

In February 1994, the family again came to the attention of DHS due to concerns Amber and Scotti were failing to thrive. That same month, a founded child abuse report resulted after Amber, age two, was admitted to the hospital

with a blood alcohol content of .198, a life-threatening level. In April 1994, Amber and her half-sibling Scotti, were adjudicated children in need of assistance (CINA) based on denial of critical care. They were returned to the care of their parents with protective services.

In June 1994, Scotti suffered seizures and possible brain damage as a result of heat stroke. Cyra had left Amber and Scotti unsupervised in an upstairs room on a day when the heat index was ninety-seven degrees. When taken to the hospital, Scotti had a temperature of 107.2. Cyra blamed Amber, then two, who was supposed to be "watching" Scotti, age 13 months. DHS issued another founded report of denial of critical care. The children were removed from the custody of their parents and placed in foster care.

Jaimie was born in December 1994. In June 1995, Cyra voluntarily agreed to place Jaimie in foster care after admitting she had struck the six-month-old and called her a "little bitch." Jaimie later returned to her parents for a brief time, but was again removed in September 1995 and adjudicated CINA.

Cyra gave birth to Shannon in December 1996. A CINA petition was filed January 17, 1997. Cyra left Iowa with Shannon after learning of the petition and went to Missouri. She eventually obtained employment and moved in with a boyfriend. However, in February 1998, Cyra was incarcerated on a bad check charge and the boyfriend gave Shannon back to her father in Iowa. Meanwhile, in February 1998, Iowa had filed a petition to terminate Cyra's parental rights to Amber, Scotti, and Jaimie. Cyra did not contest the termination.

Shannon's father proved equally incapable of caring for her. On April 19, 1998, Shannon was located in a bar in Ottumwa. Her father had left her

unattended inside a vehicle in the parking lot. He was arrested for public intoxication, and Shannon was placed in foster care. Evaluation assessments revealed that Shannon, then sixteen months old, was developmentally delayed in speech and mobility. She was not walking or using utensils to eat. She was adjudicated CINA on June 12, 1998.

In May 1998, Cyra gave birth to Kaitlyn in Missouri. Kaitlyn was immediately removed from Cyra in the hospital. Cyra consented to the termination of her parental rights to Kaitlyn in November 1998.

A termination hearing regarding Shannon was held on July 6, 1999. The juvenile court terminated the parental rights of both Shannon's parents pursuant to Iowa Code sections 232.116(1)(f) and (g). Only Cyra appealed. She argues clear and convincing evidence did not support the statutory grounds for termination and the State did not make reasonable efforts to reunite her with Shannon.

II. Scope of Review. We review proceedings to terminate a parent-child relationship de novo; we may review the facts as well as the law and adjudicate the parents' rights anew. *In re M.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Our primary concern is the best interests of the child; we look at both the child's long-range and immediate interests. *Id.*

We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re A.B., 554 N.W.2d 292, 293 (Iowa App. 1996). The grounds for termination must be proved by clear and convincing evidence. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997).

III. Cyra's Parental Rights. Cyra claims the State failed to prove the statutory elements for termination or offer reasonable services geared toward reunification.

A. Propriety of Termination. Iowa Code section 232.116(1) provides nine sets of circumstances under which parental rights can be terminated. See Iowa Code § 232.116(1). The State relied on sections 232.116(1)(f) and (g) to terminate Cyra's parental rights. Subsection (1)(f) permits termination when all of the following occur:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Iowa Code § 232.116(1)(f). Cyra only disputes that the last two requirements were met.

The second statutory ground relied upon by the State permits termination when:

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 30 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.

Cyra conceded the first three elements were met, but not the last one.

We find clear and convincing evidence Iowa Code sections 232.116(1)(f) and (g) were met. An additional period of rehabilitation would not correct Cyra's situation, and she lacks the ability and willingness to respond to services. Cyra was offered parent skill services between 1989 and 1991. Services were again offered between 1994 and 1998. When her parental rights to Amber, Scotti and Jaimie were terminated in April 1998, the court found that no further services could be offered to Cyra which would likely correct her situation.

Furthermore, Cyra's disturbing behavior toward her other children and a psychological report demonstrate all too clearly why Shannon cannot be returned to her mother without a substantial risk of harm. In August of 1998, Dr. Christopher Maglio diagnosed Cyra with impulse control disorder and antisocial personality disorder with narcissistic personality features. His report contained the following ominous statements:

Given the above patterns and difficulties as well as her documented history, it is highly unlikely that Cyra will be able to adequately and appropriately care for any children, and severe neglect and abuse, if not death, seem imminent if she is placed in a position of parenting a child or children. It is, therefore, *strongly recommended* that no children be placed in her care and custody at this time and that her children remain in alternative care. In addition, Cyra should be closely monitored so that if she were to become pregnant and give birth to any additional children, the children should *immediately* be removed and placed in alternative care before she can harm them in any way. If, in the future, Cyra can significant [sic] therapeutic progress in addressing the above issues, can demonstrate a clear understand of how her actions/behaviors impact and affect the lives of her children, and can document

increased emotional, psychological, and physical stability in her life, reunification could be considered as an option. Unfortunately, given the severe constellation of difficulties and conditions that Cyra presents, true improvement is not likely and the prognosis for change is very poor.

(Emphasis in original.) The evidence clearly indicated Cyra cannot now and may never be able to parent.

Cyra claims that after Shannon's removal, she cooperated with court-ordered services. The record does not support this contention. Cyra attended only three of six scheduled parental skill classes. She failed to complete any parent skill classes in Missouri after Kaitlyn's removal. She began to utilize mental health services only one month before Shannon's termination hearing. A psychological evaluation conducted in Missouri in 1998 concluded therapy would not have any significant impact in assisting Cyra. Although Cyra did complete a parenting class in April 1999, completion does not mean she is fit to care for Shannon. Shannon should not have to wait any longer for her mother to learn to parent her. The juvenile court properly found Cyra had been offered many and varied services with regard to Shannon and the other children. Despite services, Cyra has demonstrated an inability to make changes in her life essential to proper parenting.

B. Reasonable Efforts. Cyra's final contention is that she was not offered parenting and nurturing services in 1998 after Shannon's removal. We find error has not been preserved on this issue. The sufficiency of services should be raised at the removal or review hearing or when they are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). At the review hearing, the juvenile court even asked the

parents whether additional services were needed. No objection was lodged to the services ordered by the court after that hearing. No evidence appears in the record that Cyra challenged the adequacy of services at the appropriate times.

AFFIRMED.