

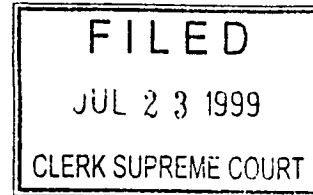
IN THE COURT OF APPEALS OF IOWA

No. 1999-170 (9-387) / 98-2100

Filed July 23, 1999

IN THE INTEREST OF C.H., J.H., and Z.P.,
Minor Children,

T.P., Mother,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee,
Associate Juvenile Court Judge.

Mother appeals the termination of her parental rights to her son. **AFFIRMED.**

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Steve Halbach, Assistant County Attorney, for appellee-State.

Sara Kersenbrock of Kersenbrock Law Office, Waterloo, guardian ad litem for
minor child.

Kellyann M. Lekar of Roberts & Stevens, P.L.C., Waterloo, for appellees-
intervenor.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

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HUITINK, P.J.

Tina, the mother of Cody, Jennifer, Katie, and Zachariah, appeals the termination of her parental rights to Zachariah. She claims the juvenile court erred in determining (1) the circumstances which led to the CINA adjudication continued to exist despite the offer and receipt of services, (2) Zachariah could not be returned to her care, and (3) the termination was in his best interests.

Tina P. is the mother of Zachariah, born in January 1997. She also is the mother of Cody, born in 1992, Jennifer, born in 1989, and Katie, but her parental rights to them were not at issue. Tina makes no claims on appeal concerning Cody and Jennifer. Katie's paternal grandparents already have guardianship of her, and she was not involved in the CINA proceedings. David is the father of Zachariah. His parental rights also were terminated, but he did not appeal.

CINA proceedings. In August 1997 Cody, Jennifer, and Zachariah were adjudicated in need of assistance under Iowa Code sections 232.2(6)(b), (c)(2), (e), (g), and (n) (1997), based in part on three founded child abuse reports. Tina and David had a history of domestic violence and had no stable residence. At the time of adjudicatory hearing, Zachariah was living with his paternal grandparents, and Cody and Jennifer were living with Tina's parents. In October the court entered a dispositional order placing custody of Cody and Jennifer with their maternal grandparents and Zachariah with his paternal grandparents. The court ordered Tina to participate in individual counseling for co-dependency and David to participate in

substance abuse treatment and batterer's education. The court also ordered couples' counseling and family-centered services, to include parent skill development.

Neither Tina nor David participated in the services required. They separated in November, and Tina moved into her parents' home. Her presence in the home disrupted the routine established for Cody and Jennifer. Because her father insisted Tina not have contact with David, Tina's relationship with her father was rocky. Tina moved in with her sister, then moved in with a family where David was staying, and then moved back in with her sister.

After a review hearing in March 1998, the court continued the children's placement with grandparents. It found Tina had failed to participate in individual counseling for co-dependency and depression. It found David had not participated in substance abuse treatment, admitted using marijuana, refused random urinalysis, and failed to attend the batterer's education program. The court set a permanency hearing in conjunction with the next review hearing.

Tina began cooperating with services to some extent. In June 1998 she returned to her parents' home and began caring for Cody and Jennifer whenever she was not at work. Tina did not exercise regular (twice monthly) visitation with Zachariah until March 1998, nor did she provide more than a minimum of financial support until child support was garnished from her paychecks, beginning shortly before the termination hearing. She apparently stopped seeing David. She maintained employment at a minimum-wage job, but relied on her parents for much of the

financial assistance needed to provide for Cody and Jennifer. Tina denied she has any co-dependency problems.

Termination proceedings. In July 1998, the State filed a petition to terminate Tina's parental rights to Zachariah. His paternal grandparents, Candace and Lloyd, intervened. They desire to adopt Zachariah. In October 1998, the court held a combined permanency and termination hearing. The permanency hearing concerned Cody and Jennifer. The termination hearing concerned Zachariah. The court granted the petition to terminate Tina's parental rights to Zachariah under Iowa Code sections 232.116(1)(c) and (g). The court based its order in part on Tina's failure to participate in services, her lack of contact with Zachariah, and her co-dependence on abusive males. The court found Tina could not provide a home for her three children and would struggle financially if she attempted to move out of her parents' home. The court continued placement of Cody and Jennifer with Tina's parents, "subject to increasing parenting responsibilities for the children's daily care and supervision being given to their mother . . . with continued supervision by the Iowa Department of Human Services who shall arrange for continued family centered services."

Claims on appeal. On appeal, Tina claims the court erred in determining (1) the circumstances that led to the adjudication Zachariah was in need of assistance continued to exist despite the offer and receipt of services, *see* Iowa Code § 232.116(1)(c)(2); (2) Zachariah could not be returned to her care, *see* Iowa Code § 232.116(1)(g)(4); and (3) the termination was in his best interests.

Scope of Review. Section 232.116(1)(c)(2) requires that the circumstances which led to the CINA adjudication continue to exist, despite the offer and receipt of services. The requirement of Iowa Code section 232.116(1)(g)(4) is met when the child cannot be returned to the parental home because any of the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist. See *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). 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 the termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995).

The juvenile court concluded Zachariah would be subject to the adjudicatory harms as set forth in sections 232.2(6)(c)(2), (e), (g), and (n).¹ It apparently based this

¹ These sections provide:

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

conclusion on its findings Tina could not provide financially for her children at that time, she continued to deny any co-dependency problem, she demonstrates poor judgment concerning the children when with them if a man is involved in her life, she treated Zachariah as an "infrequent guest" during visitation, she spoke of Zachariah as a possession, and demonstrated little emotion when testifying about him. Zachariah has been out of Tina's care for the majority of his life. His grandparents have provided well for him, and he has developed well in their care. Zachariah apparently has outgrown his seizure disorder and no longer needs medication to treat that condition. The court found "with an additional six months of services and assuming she does not enter into any new dependent relationship with an abusive male, the court reasonably concludes that Tina . . . can legitimately parent Cody and Jennifer." The court also found Zachariah, at twenty-one months could not wait another six months for permanency. We agree. While we recognize that the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," Iowa has built this patience into the statutory scheme of chapter 232. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987). It provides this patience by prescribing certain steps to protect the rights of natural parents in termination proceedings. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). However,

[t]here are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended

while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process.

In re A.C., 415 N.W.2d at 613. For this reason, plans which exceed the twelve-month period during which a parent tries to achieve adequate parenting skills are viewed with a sense of urgency. *Id.* at 614; *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993).

The juvenile court, in discussing Zachariah's placement with his grandparents, found "to uproot [Zachariah] from that stable environment at this point in his life would cause serious emotional harm and insecurity." The court also found the grandparents provided appropriate protection for Zachariah from his father, their son. Tina's inability to provide a home for her three children independent of her parents could place them at risk if placed entirely in her care at the time of the termination hearing. Her own delay in participating in services meant she had not progressed to the point of having the children returned to her by the time of the termination hearing. Her lack of a significant relationship with Zachariah would increase the risk to him if returned to her care. Under the termination statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

At the time of the termination hearing, there was no traditional parent-child bond between Tina and Zachariah. Rather, his "family identity and functioning is clearly with" his paternal grandparents. He is integrated into their home. They have

provided the care and nurture he needs. They plan to adopt if Tina's parental rights are terminated. The legislature has categorically determined "the needs of a child are promoted by termination of parental rights" if the grounds for termination of parental rights exist. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). If the grounds exist, termination of parental rights was the proper alternative for the juvenile court to decree rather than a permanency order. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa App. 1992). We find termination proper under Iowa Code section 232.116(1)(g) and in Zachariah's best interest.

AFFIRMED.