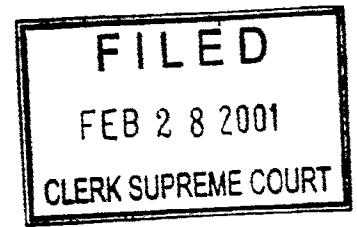


IN THE COURT OF APPEALS OF IOWA

No. 0-841 / 00-1195
Filed February 28, 2001



IN THE INTEREST OF K.A.P., Minor Child,
M.P., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
District Associate Judge.

Mother appeals the juvenile court's order terminating her parental rights. She contends the juvenile court erred when it ordered termination of her parental rights under Iowa Code section 232.116(1)(c) (1999) because the record demonstrates that she did not receive, and in fact was denied, the services necessary to allow her to correct the circumstances which led to the adjudication. She further argues that the court erred when it ordered termination under Iowa Code section 232.116(1)(f) because the record demonstrates that she showed an ability and willingness to respond to services to correct the situation.

AFFIRMED.

Irene Schrunck, Sioux City, for appellant.

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

Marchelle Denker, Juvenile Law Center, Sioux City, for minor child.

Martha McMinn, Sioux City, for father.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

SACKETT, C.J.

M.P., the mother of K.A.P., born October 11, 1999, appeals the termination of her parental rights. She contends that (1) she was denied services as required under Iowa Code section 232.116(1)(c) (1999); (2) there is not clear and convincing evidence that she lacks the ability or willingness to respond to services under Iowa Code Section 232.116(1)(f) (1999). We affirm.

We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995); Iowa R. App. P. 14(f)(7).

M.A., age twenty-eight, has given birth to eight children. Prior to the birth of K.A.P., she had had her parental rights to all seven children terminated, the last termination occurring in December of 1998. Immediately after the birth of K.A.P., the State of Iowa obtained an order for temporary removal of the child and petitioned for its adjudication as a Child in Need of Assistance (CINA). After the removal of the child, M.A. had a succession of supervised visitations. After M.A. missed a scheduled visit in December of 1999, the Department of Human Services (DHS) terminated the visitations. On January 19, 2000, at a hearing that M.A. did not attend, K.A.P. was adjudicated a Child In Need of Assistance (CINA). Temporary custody remained with the DHS.

On January 25 the State filed a petition for termination of parental rights (TPR). M.A. did not attend the May 3 hearing regarding the termination petition.

Her parental rights were terminated by order of the juvenile court on June 17, 2000.

We address both of M.A.'s statutory claims together; the same reasoning applies to both. The State is required to make reasonable efforts to reunite the parent and child prior to termination. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa Ct. App. 1993). In proceedings to terminate parental rights, the reasonableness of services the State has offered in an effort to preserve the family should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). Because this mother has been offered services so many times before, and because she appears to maintain the lifestyle which resulted in her losing parental rights to her other seven children, a difficult question arises with regard to the State's responsibilities: After the continued provision of services has proven futile, is the State making reasonable efforts if it fails to provide new services? We conclude that it is. As the juvenile court concluded:

The offer of additional services at this time would be futile. [M.A.] has not displayed any factors which would suggest that she has changed her pattern of behavior or lifestyle at this time. To require the Department of Human Services to repeat the same services to [M.A.] that have been offered to her over the past decade would only delay the establishment of [a] permanent home for the child. No additional services at this time could assist reuniting [K.A.P.] with [M.A.] within any reasonable period of time.

This ruling is consistent with our previous ruling involving this same mother in which we found additional services to be unnecessary if they had previously proven futile in the cases of her other children: In that prior case we acknowledged the futility of the State's being required to offer the same myriad of services to no avail.

The record supports the district court's conclusion that offering additional services at this juncture is futile. Evidence of past performance may be indicative of the quality of future care the parents are capable of providing. *Dameron*, 306 N.W.2d at 745. Although M.A. sought visitation initially, she appeared uninterested in pursuing it. She claimed she missed a December 1999 visitation due to her inability to find transportation from Sioux City to Storm Lake, yet she was able to procure transportation from Sioux City to Omaha on the same day. When it came time to discuss the possibility of reinitiating visitation, M.A. failed to call the DHS, as she had agreed, and she permanently left her place of residence without giving DHS any future means of contacting her. She failed to appear at either the CINA adjudication or the termination hearing. Were it not for a seven-child history of disinterest and neglect, further efforts at providing services might qualify as reasonable. But as evidenced by her seven prior terminations, M.A. has proven to be unreliable, neglectful, and generally disinterested in maintaining any kind of a meaningful relationship with her children. The record shows that this is still the case.

Iowa Code section 232.102 addresses this issue. In cases such as this one where a parent has already had parental rights terminated, and there is clear and convincing evidence that the future provision of services will be ineffective with respect to another child, a court may waive the requirement for making reasonable efforts. So whether "reasonable efforts" includes the decision not to offer future services, as case law suggests, or whether "reasonable efforts" can be waived, as the statute allows, the result is the same: new services are not

always required, and the failure of the State to provide them does not make the termination necessarily problematic.

The same evidence that makes the provision of new services unnecessary under Iowa Code section 232.116(1)(c) also supports a finding under section 232.116(1)(f) that M.A. continues to lack the ability or willingness to respond to services which would correct the situation. We therefore reject M.A.'s argument that the statutory requirements for termination have not been met. The State presented clear and convincing evidence that M.A. was offered sufficient services under Iowa Code section 232.116(1)(c) as well as that she has not been responsive in the past and additional time for rehabilitation would not be beneficial under Iowa Code section 232.116(1)(f).

A primary consideration in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). K.A.P.'s best interests are served by the termination of M.A.'s parental rights. K.A.P. has been living in a pre-adoptive foster home since she was three days old, a span of more than fifteen months. The record shows that she is thriving in that home, that one of M.A.'s other children (to whom she lost parental rights) has been adopted by this foster family, and that the family wishes to adopt K.A.P. as well. To continue to keep children in temporary foster homes is not in their best interests. *In Interest of B.K.G., Jr.*, 483 N.W.2d 608, 611 (Iowa Ct. App. 1992). The best interests of K.A.P. will be served if her stable and loving foster family, the only family she has ever known, is indeed her family. For this reason it is in her interest that M.A.'s parental rights be terminated.

We affirm the decision of the juvenile court to terminate M.A.'s parental rights to K.A.P.

AFFIRMED.