

IN THE COURT OF APPEALS OF IOWA

No. 1999-420 (9-673) / 99-769

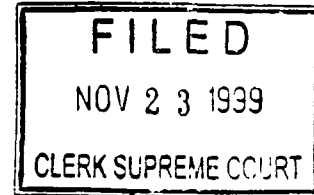
Filed November 23, 1999

IN THE INTEREST OF S.D.,

Minor Child,

C.D., Mother,

Appellant.



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

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

Sarah W. Cochran of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Timothy W. Dille, County Attorney, for appellee State.

~~Stephan H. Small~~, Fairfield, guardian ad litem for minor child.

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

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VOGEL, J.

Christina D. appeals the termination of her parental rights of her daughter Skyler. As we find clear and convincing evidence that Skyler cannot be returned to Christina, we affirm.

Background facts. Skyler D. was born to Christina D. on August 12, 1996. Skyler's father, Chad L., initially denied paternity and has played no active role in her life. Christina began receiving services shortly after Skyler's birth when Skyler exhibited poor weight gain. On September 25, 1996, a child abuse report was filed alleging that Christina's failure to treat Skyler for scabies had resulted in Skyler developing a secondary staph infection. An investigation resulted in a founded report of denial of critical care. Christina began receiving additional services, but failed to meet with in-home providers, canceled many visits and was generally uncooperative. On November 27, 1996, Skyler was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) (1995). Skyler remained in her mother's care for a time, but was removed on January 15, 1997, due to Skyler's hospitalization for pneumonia and/or respiratory distress, Christina's failure to appear for a dispositional hearing, ~~and~~ Christina's failure to maintain Skyler's medical and nursing appointments.

A petition to terminate Christina's parental rights was filed on January 27, 1999. After hearing, the juvenile court entered an order terminating Christina's and

Chad's parental rights pursuant to Iowa Code sections 232.116(1)(g) (1997). Christina now appeals.

Scope of review. The scope of review in termination cases is de novo. *See In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). 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). Our primary concern is the best interests of the child; we look to both the child's long-range and immediate interests. *M.N.W.*, 577 N.W.2d at 875.

Clear and convincing evidence. Christina contends that the State failed to prove by clear and convincing evidence that her parental rights should be terminated pursuant to Iowa Code section 232.116(1)(g)(1997). In particular, she challenges the finding that Skyler could not be return to her custody.

Iowa Code section 232.116(1)(g)(1997) allows the juvenile court to terminate parental rights when:

- (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 section 232.102(5) provides that custody of a child should not be transferred unless the court finds there is clear and convincing evidence that:

a. The child cannot be protected from physical abuse without transfer of custody; or

b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation in the home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made.

After reviewing the record, we find clear and convincing evidence that Skyler could not be returned to Christina's custody. The record supports that Skyler was removed because Christina failed to recognize Skyler's need for medical attention, failed to make and keep medical appointments, and failed to follow medical directions. Her failure to promptly and consistently treat Skyler with prescribed medications led to Skyler developing a secondary staph infection. Christina also failed to administer prescribed nebulizer treatments to Skyler, failed to consistently give Skyler nutritional supplements to increase her weight gain and failed to follow dosage directions.

Prior to Skyler's removal, Christina received homemaker services, nurse services, family preservation, Promise Jobs, substance abuse treatment and parent skill development services. These services continued following Skyler's removal, but

Christina was only successful in completing a substance abuse treatment program. In all other areas, Christina demonstrated that she was either unwilling or unable to improve her parenting skills and provide a safe and healthy environment for Skyler. In-home providers usually found the home to be cluttered and dirty. Frequently there were small objects on the floor which presented a risk of choking, and on two occasions, open bottles of Tylenol. Christina apparently could not appreciate the danger these conditions presented to Skyler. Services providers also reported that Christina was unable to properly supervise Skyler's activities during visits or respond to her needs, despite repeated prompting. During many visits, Christina chose to visit with neighbors rather than interact with and supervise Skyler. Providers reported that Christina appeared passive as to her parenting responsibilities and Skyler demonstrated little attachment to Christina.

A child should not be forced to suffer the parentless limbo of foster care endlessly. *See In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *see also Long v. Long*, 255 N.W.2d 140, 146 (Iowa 1977). We must reasonably limit the time for parents to be in a position to assume care for their children because patience with parents can soon **translate** into intolerable hardship for the child. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1994). At some point, the rights and needs of the child rise above the rights and needs of the parents. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Skyler has been in foster care since she was five months old and is now three

years old. We find it is in her best interest that Christina's parental rights be terminated so Skyler can have the permanency she deserves.

As we find clear and convincing evidence to support termination of Christina's parental rights to Skyler pursuant to Iowa Code section 232.116(1)(g), we hereby affirm the order of the juvenile court.

AFFIRMED.