

IN THE COURT OF APPEALS OF IOWA

No. 9-296 (1999-109) / 98-2099

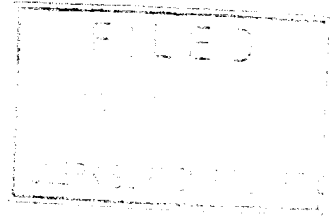
Filed May 26, 1999

IN THE INTEREST OF M.G. AND S.G.,

Minor Children,

M.G., Mother,

Appellant.



Appeal from the Iowa District Court for Chickasaw County, Allan D. Allbee,
Associate Juvenile Judge.

The mother of two minor children appeals a district court ruling terminating
her parental rights. **AFFIRMED.**

Kellyann M. Lekar of Roberts & Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Stephen C. Robinson, Assistant Attorney
General, and Mark E. Huegel, Assistant County Attorney, for appellee State.

Roger L. Sutton of Sutton & Troge's Law Office, Charles City, for children's
guardian M.C.

Lewis M. Churbuck of Elwood, O'Donohue, O'Connor & Stochl, Charles City,
guardian ad litem for minor children.

Considered by Huitink, P.J., and Streit and Zimmer, JJ. Sackett, C.J., takes no
part.

PER CURIAM.

Michelle appeals the termination of her parental rights. She contends the State has failed to prove by clear and convincing evidence the children cannot be returned to her care. We affirm the district court's decision to terminate her parental rights.

Michelle and Shawn are the parents of Misha, born in April 1995, and Shawna, born in June 1996. The Department of Human Services (DHS) became involved with the family in February 1996, when an investigation found Misha had received inadequate clothing and supervision at the hands of her parents. When the police responded to a report of child abuse, Michelle attempted to flee and took Misha outside in sub-zero degree temperature with only a light jacket on. Michelle failed to properly supervise Misha, as bruises were found on Misha's head and arm after being hit by Shawn and thrown against a refrigerator on an earlier occasion. The report also stated Shawn had been abusive toward Michelle and had a warrant for an earlier assault on Michelle. Michelle voluntarily placed Misha in the care of the child's maternal great-grandmother, Maggie. Misha was adjudicated to be a child in need of assistance in March 1996. Misha remained in the care of Maggie. Michelle and Shawn were required to participate in parent skill development classes, to attend domestic violence groups, to address issues of anger and stress management, and to participate in a substance abuse evaluation. Shawn refused to participate in any of the services; Michelle did attempt to participate in some of the services, but was limited in her participation by Shawn's control and threats of violence.

Shawna was born in June 1996. She was removed from the home when she was five days old because Michelle and Shawn had not participated in the services and Michelle continued her relationship with Shawn. Shawna was placed with Maggie and was adjudicated in need of assistance in September 1996. The court was concerned with the domestic abuse in the parent's home and with Michelle's belief domestic abuse was normal in a home. Due to the parents' insufficient participation in services and due to violence exhibited by both parents since the initial removal, the court ended all contact between the parents and children in November 1996. A September 1997 decision found the grounds for termination had been met, but that termination of parental rights was not in the children's best interests because they were placed with the great-grandmother, Maggie. The court continued the no-contact order for the parents. The case was transferred to Chickasaw County, where the DHS offered services for Maggie, but discontinued any services for the parents.

Maggie suffered a heart attack in December 1997, and the children were placed with a previous caregiver. A termination petition was filed on April 29, 1998. Michelle had remained with Shawn until April 2, 1998, when he was sent to prison. At this point, Michelle moved in with Maggie. Michelle filed for divorce in May 1998. In June 1998, Michelle became involved with Tim and within three weeks they were engaged and Michelle became pregnant. The pregnancy ended with a miscarriage. On June 29, 1998, Michelle filed an application to resume visitations with her girls. The court allowed for supervised visitations and found since Maggie

was no longer able to care for the children, Michelle's parenting skills should be reviewed as modification of the permanency order would be needed.

Michelle took part in a psychosocial evaluation and parenting assessment in July and August 1998 under the direction of Nancy Stockman of Alternative Treatment Associates. There were eleven visits encompassing more than twenty hours of contact between Michelle and the girls. Stockman found Michelle possessed adequate parenting skills and was attentive toward her children; however, she questioned Michelle's willingness or ability to engage in the lengthy therapeutic counseling necessary to provide long-term care for the children given Michelle's resistance to providing information concerning her past, including her relationship with her own parents and a lack of cooperation with prior service providers. She testified at the termination hearing that although the children would most likely be safe with Michelle, they would be subject to instability and tension.

Following the termination hearing in October 1998, the court issued an order terminating Michelle's parental rights pursuant to Iowa Code section 232.116(1)(g)¹.

¹Iowa Code section 232.116(1)(g):

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:

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 thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to

Shawn's parental rights were also terminated. Michelle is the only one to appeal the termination of her parental rights.

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 App. 1995); Iowa R. App. P. 14(f)(7).

On appeal, Michelle contends the trial court erred in terminating her parental rights because the legal grounds for termination were not met. Michelle claims there was not clear and convincing evidence the children would be harmed if they were returned to her home, thus not satisfying section 232.116(1)(g)(4). The court has long recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d at 745. The State must act to prevent probable harm to the children and need not delay until actual physical harm has occurred. *Id.* The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812

the custody of the child's parents as provided in section 232.102 at the present time.

(Iowa 1992). Our primary concern in a termination proceeding is the best interests of the child. *In re Dameron*, 306 N.W.2d at 745; Iowa R. App. P. 14(f)(15).

Michelle argues her situation is unique in that the reason the children were removed initially was because of the violence exhibited by Shawn and now that Shawn is out of her life the children would not be in danger of harm if they were returned to her home. We question the validity of this statement; in looking at the record of this case, we find a future for these children filled with uncertainty. In determining if the children can be returned to Michelle's care, we must consider what the future likely holds for them if returned to their mother. We can gain insight into the children's prospects by reviewing the evidence of the parent's past performance, for it may be indicative of the parent's future capabilities. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). Unfortunately, the record is replete with evidence of Michelle's instability as a parent, including Michelle allowing Maggie to be responsible for all appointments and arrangements for the girls; Michelle's lack of motivation to secure independent housing and secure employment until recently and at Maggie's urging; her ambivalent feelings and behaviors about her relationship with Shawn; uncertainties in her relationship with Tim; and dependency on others, coupled with inexperience of being on her own.

We are especially concerned with history quickly repeating itself as Michelle immediately became involved with another man, Tim, only one month after filing for divorce from Shawn. Tim has a history of alcohol and domestic abuse. He has a prior

conviction of operating a motor vehicle while intoxicated and loss of his driver's license for six months and a conviction for open container only three months prior to the hearing. He was found guilty of domestic abuse assault eighteen months prior to the hearing and presently there is a no-contact order between Tim and his former girlfriend. Though there have been no signs of physical abuse currently, we find little comfort in that. These two young girls have been surrounded by threats of violence and instability for most of their lives and we are not willing to place them back into a home with a person who has a history of abuse. Our concern is compounded when looking at Michelle's ties to Shawn. She left Shawn only when he went to prison and it is questionable if she is willing to sever all ties between him and the girls. She stated she planned to make sure the girls know who their real daddy is, and that they know he is away for only for a short time. Michelle continues to deny and downplay the incident which led to Misha's initial removal from her home. She continues to refuse to accept any responsibility for her children's placement out of her home. Michelle continues to deny or minimize the risk posed to her children by Shawn, saying most of the time *she* was the one who brought out Shawn's anger by striking him. We cannot be confident that Michelle would not foster a relationship between Shawn and the girls once he is released from prison. In looking at both Michelle's past and present situations, we see a very uncertain and frightening future for the children if left in her care. The last minute efforts by Michelle to portray herself as a fit parent are not enough to overcome her past actions or to demonstrate she has the

necessary capabilities to raise her daughters. We affirm the district court in terminating Michelle's parental rights.

AFFIRMED.

No. 98-2099. [9-296 (1999-109)] IN RE M.G.

Appeal from the Iowa District Court for Chickasaw County, Allan D. Allbee, Associate Juvenile Judge. **AFFIRMED.** Considered by Huitink, P.J., and Streit and Zimmer, JJ. Per Curiam. Sackett, C.J., takes no part. (8 pages \$3.20)

Michelle and Shawn are the parents of Misha and Shawna. In February 1996, Misha was removed from the home by DHS due to inadequate supervision. Shawn was abusive to Michelle and Misha. Misha was placed with her great-grandmother, Maggie. Michelle and Shawn were required to take part in DHS services, but Shawn refused and Michelle was limited in her participation by Shawn's control and threats of violence. Shawna was born in June 1996, and removed from the home five days later because of her parents refusal to take part in services. She was placed with her great-grandmother as well. In September 1997, the court found there were grounds for termination, but it would not be in the best interests of the children because they were placed in their great-grandmother's home. Shawn and Michelle were ordered to have no contact with the children and DHS services to them were discontinued. Maggie suffered a heart attack in December 1997, and the children were placed in another home. A termination petition was filed April 29, 1998. Michelle left Shawn at the beginning of April when he was sent to prison. She filed for divorce and moved in with Maggie. In June 1998, Michelle became involved with Tim. On June 29, 1998, Michelle filed an application to resume visits with her daughters. She was allowed to have visits with them and underwent a parenting assessment. The assessor found Michelle possessed adequate parenting skills, but was concerned with Michelle's willingness to engage in the therapeutic counseling necessary to provide long-term care for the children. The assessor testified she did not think the children would be harmed if returned to Michelle's care, but they would be subject to instability and tension. Michelle's parental rights were terminated pursuant to Iowa Code section 232.116(1)(g). **OPINION HOLDS:** Michelle contends there was not clear and convincing evidence the children would be harmed if returned to her. The State has the duty to act to prevent probable harm to the children and need not delay until actual harm occurs. Michelle argues since Shawn is out of her life, the children are out of harm's way. We are able to gain insight into the children's future by looking at Michelle's past actions. Michelle has shown a lack of stability and immaturity. We are concerned with Michelle's involvement with Tim because of his history of alcohol and domestic abuse. Michelle became involved with Tim within a month of filing for divorce from Shawn. Within three weeks, Michelle was engaged to Tim and was expecting his baby. We are concerned with the possibility of abuse from Tim, as well as the future influence Shawn may have on the girls. We are not convinced Michelle has severed all ties from Shawn. Michelle's last minute efforts to portray herself as a fit parent are not enough to overcome her past actions.