FILED
MAY 31 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF W.T.G., M.A.G., M.A.G., and C.S.G.,	)	
Children,	)	Filed May 31, 1983
L.S.G., Natural Mother,	)	3-78 3-68267
Appellant.		

Appeal from Polk District Court - Vincent M. Hanrahan, Judge.

The natural mother of four children appeals from the trial court order terminating her parental rights pursuant to Iowa Code section 232.116(2) and (5). AFFIRMED.

Kevin Kelly and Ray Sullins, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Brent D. Hege, Assistant Attorney General, for appellee State of Iowa.

Randall C. Wilson, Des Moines, for the children.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J. takes no part.

DONIELSON, J.

The natural mother of four children appeals from the trial court order terminating her parental rights pursuant to Iowa Code section 232.116(2) and (5). The natural mother asserts on appeal (1) that she was denied due process because the petition for termination of her parental rights did not give her adequate notice of the factual allegations on which the proposed termination was based; and (2) that there was not sufficient evidence that the children could not be returned to her custody. We affirm.

Appellate review of proceedings to terminate a parent-child relationship is de novo and, while we accord weight to the findings of the trial court, we are not bound by those findings. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

I.

The present situation came to the attention of juvenile authorities when, on May 12, 1980, L.S.G. failed to pick up her four children (W.T.G., then age four, M.A.G., then age two, M.A.G., then age seventeen months, and C.S.G., then age two months) from the babysitter. The babysitter took the children to Broadlawns Hospital and left them there. It appears that L.S.G. had taken the children to the babysitter on May 7 when she was experiencing emotional tensions. Juvenile authorities were contacted, and the children were placed in temporary foster care that evening. Two days later, on May 14, 1980, L.S.G. asked juvenile authorities about her children but declined to have them returned. She visited the children on May 16, 1980, but missed later visitation appointments, and juvenile authorities lost contact with her until July, 1980.

On July 11, 1980, the children were adjudicated to be in need of assistance, and foster care was ordered continued. Soon thereafter, the seventeen-month-old child had to be hospitalized in Iowa City, and L.S.G. stayed with him there. The child, M.A.G., has a cleft palate and what has been diagnosed as a terminal brain

tumor (histiocyctosis) which requires chemotherapy treatment and close monitoring. While L.S.G. has spent time with M.A.G. in Iowa City where he receives treatment, it appears that she has trouble accepting M.A.G.'s illness. Demonstrating an inability to face her problems, L.S.G. chose to ignore them completely and dropped out of sight. Juvenile authorities lost contact with L.S.G. until November, 1980, when she visited the children and then again disappeared. In January, 1981, L.S.G. was arrested for prostitution. She visited the children once that month.

In February, 1981, the child-in-need-of-assistance review was held. The juvenile court ordered a parental rehabilitation contract executed. L.S.G. executed a contract which required her to visit the children weekly and become involved with their medical care, take parenting classes, get therapy, secure employment and a permanent residence, and meet with case workers. However, juvenile authorities then lost contact with L.S.G. again, this time until September, 1981.

In October, 1981, the State filed a petition for termination of L.S.G.'s parental rights pursuant to Iowa Code §§ 232.116(2) and (5). The petition alleged that since L.S.G. had left the children in May, 1980, she had had "very limited visitation" with them and had provided no "financial or emotional support," and she continued "to experience problems with her shelter, employment, finances, male relationships and emotional health" that made her unable to follow the parental rehabilitation contract. After the hearing on the termination, the court ordered L.S.G.'s parental rights terminated. She then instituted this appeal. The parental rights of the childrens' fathers were also terminated but they are not involved in this appeal.

II.

Initially, L.S.G. contends that the termination petition did not give her

adequate notice for trial preparation. At the beginning of the October, 1981, termination hearing, L.S.G. had moved to dismiss, asserting that the paragraph of the petition dealing with Iowa Code section 232.116(5) did not give specific examples of her alleged misconduct and that she had therefore been denied her due process right to adequate notice. The juvenile court overruled the motion to dismiss.

L.S.G. argues that the petition in the instant case is similar to the one held to be insufficient in Alsager v. District Court of Polk County, 406 F.Supp. 10 (S.D. Iowa 1975), aff'd. 545 F.2d 1137 (8th Cir. 1976). In that case the court held that due process "requires notice in parental termination proceedings to contain both the alleged factual basis for the proposed termination and a statement authorizing termination." Alsager, 406 F.Supp. at 24. The petition in Alsager was deficient because it included no factual allegations, but cited the code section justifying termination. We believe the instant case is distinguishable.

The petition in the instant case included the following factual allegations:

> 13.) That the parental rights of [L.S.G.] with respect to all the children in interest should be terminated with the meaning of Section 232.116(2) of the Code of Iowa, 1981 in that there is clear and convincing evidence that the children have been abandoned by [L.S.G.]. She left the children on or about May 9, 1980 and as a result they were legally removed from her custody. She has had very limited visitation with the children since that time. She has made few and unsuccessful efforts to regain custody. She has not provided financial or emotional support. She has surrendered the parental rights and duties inherent on the parent-child relationship. Her involvement with the children during their placement has been so limited that any actual parent-child relationship no longer exists.
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> 14.) That the parental rights of [L.S.G.] with respect to all the children in interest should be terminated within the meaning of Section 232.116(5) of the Code of Iowa, 1981 in that:
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> * * *
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> (c) There is clear and convincing evidence that the children cannot be returned to the custody of

> [L.S.G.] as provided in Section 232.102 because the children will suffer harm in the manner specified in Section 232.2, subsection 5 if they are returned. The mother has not participated satisfactorily with the services and programs offered through the Juvenile Court Probation Office. She has had very limited involvement with her children in the last few years. She has made no changes on her own. She has done nothing to demonstrate that the problems existing in the home prior to removal would not continue. Her lack of involvement shows there is no reason to believe the children won't be abandoned again or suffer harmful effects as a result of the mother's lack of supervision. Nothing has happened since placement to believe there will be any change in the medical care or the provision of adequate food, clothing and shelter. The mother continues to experience problems with her shelter, employment, finances, male relationships and emotional health that have contributed apparently to her inability to abide by the contract of expectations or maintain regular contact with her children in order to regain custody of her children.

While we agree that the factual allegations could have been more detailed, we believe they are sufficient to provide adequate notice to L.S.G. of the complaints against her. In In Interest of Hewitt, 272 N.W.2d 852, 857 (Iowa 1978), the court applied Alsager and held that "a general statement of the facts relied on must be stated as a minimum, in addition to the other required information." Moreover, since the same general issues are raised in the termination proceeding as those which were raised and litigated in the CHINA proceeding, we believe L.S.G. was sufficiently notified of deficiencies in her parenting habits which formed the basis of the termination petition. See In re Interest of Ponx, 276 N.W.2d 425, 431-32 (Iowa 1979); In re Interest of Hocmuth, 251 N.W.2d 484, 489 (Iowa 1977). Accordingly, we hold L.S.G.'s first contention to be without merit.

III.

On the merits, appellant L.S.G. asserts that there is no clear and convincing evidence that the children cannot be returned to her custody as provided in

section 232.102. In examining the record before us, we are guided by well-established principles which were stated by the court in the Dameron case.

> Central to a determination of this nature are the best interests of the child. [citation] In this connection, we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insights for those determinations can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. [citations]
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> This court has often recognized that there exists a parental interest in the integrity of the family unit; nonetheless, we also are cognizant that this interest is not absolute, but that it may be forfeited by certain parental conduct. [citations] Because the State as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. [citations]
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> Furthermore, it is our view that the current statutory termination provisions applicable here, like those they replace, are preventive as well as remedial. The provisions therefore mandate action to prevent probable harm to a child and do not require delay until harm has occurred. [citations]
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> Finally, as previously noted, the grounds alleged here for the termination of parental rights must by statute be proven by clear and convincing evidence. [citation]

306 N.W.2d at 745. Of particular importance to the resolution of this controversy is the court's determination of the standard of the parties' burden of proof under Iowa Code § 232.116(5)(c).

> The reference to section 232.102 creates a burden of proof problem that we have recognized, but not previously resolved. See In re Dameron, 306 N.W.2d 743, 744, 747 n.4 (Iowa 1981); In re Adkins, 298 N.W.2d 273, 278 (Iowa 1980). The problem is that section 232.114(5)(c) requires clear and convincing proof that the child cannot be returned to the custody of the parents, whereas section 232.102(6) requires temporary placement be terminated and the child returned to his home if the court finds, by a preponderance of the evidence, that the child will not suffer harm in the manner specified in section 232.2(5). See, e.g., In re Blackledge, 304 N.W.2d 209, 214-15 (Iowa 1981). We resolve this conflicting standard of proof problem by holding that in the termination of parental rights context, the clear and

> convincing standard of section 232.114(5) prevails and applies to the showing of harm requiring pursuant to section 232.2(5). In other words, before a termination of parental rights can occur under section 232.114(5), there must be clear and convincing proof that the child will suffer harm in the manner specified in section 232.2(5). This is the minimal burden of proof now required in this type of case by the due process clause of U.S. Const. amend. XIV. Santosky v. Kramer, ____ U.S. ____, ____, 102 S. Ct. 1388, ____, 71 L. Ed. 2d 599, 603 (1982).

In Interest of Chad, 318 N.W.2d 213, 219 (Iowa 1982).[1] With these principles in mind, we examine the merits of this controversy.

Our de novo review convinces us that there was sufficient evidence that the children could not be returned to L.S.G. and that her parental rights should, therefore, be terminated. After the children were found at Broadlawns Hospital and taken in by juvenile authorities, L.S.G. could not be located so the children were treated for head lice and placed in emergency foster care. L.S.G. contacted juvenile court authorities two days later asking about her children. She declined to have them returned to her and indicated that she did not wish to see them. Social workers contacted L.S.G. numerous times in an attempt to set up various appointments to discuss a case plan for having the children returned and to set up visitation. L.S.G. did not show up for the initial appointments. After the July, 1980, CHINA hearing L.S.G. did meet with a social worker to establish a case plan and visitation schedule. With the exception of the one time that L.S.G. accompanied her son, M.S.G., to the hospital for treatment of a cancer problem, L.S.G. did not keep the visitation schedule. In fact, L.S.G. did not show up for the next four months and authorities were unable to locate her.

Thereafter in November, 1981, L.S.G. contacted authorities and requested to see the children. An appointment was made with the case worker and a time was set for L.S.G. to visit the children. She failed to meet with the case worker but did see the children for a short time. She refused to set up another appointment

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[1] Section 232.114 was renumbered section 232.116 in the 1981 Code.

to discuss her plans regarding the children and was not heard from again until January, 1981, at which time she was arrested for prostitution. L.S.G. was contacted and attended the CHINA review hearing. Foster care was continued when the court found, among other things, the natural mother has totally failed to make any affirmative effort to have the children returned to her custody.

A contract between L.S.G. and the State was executed under which L.S.G. agreed to visit the children on a regular basis, participate in therapy, keep the probation officer advised of her whereabouts, establish a residence, keep the case worker and probation officer informed of any change in her residence, and to attend a parenting class. L.S.G. failed to comply with any of these provisions. She missed her scheduled visits with the children. Juvenile authorities attempted to contact her but could not locate her. This is especially troublesome in light of the fact that M.A.G. was still seriously ill with cancer. His mother was under the impression that he was terminally ill, yet made no effort to check on his condition or to spend any time with him. This is one of the more extreme examples of her lack of concern for her children.

Only at the termination hearing did L.S.G. indicate a desire to have the children returned to her. She testified that the problems which began in May, 1980, had been caused by emotional stress and the influence of her boyfriend. At the time of the hearing, L.S.G. had a job but still did not have adequate housing; she was apparently pregnant with another child by her boyfriend. L.S.G. also has another older child, who is not involved in these proceedings.

The court found and we agree that the four children involved in this proceeding "cannot be held in limbo forever on the hopes that the mother will get her act together and be able to mother them again." The experts and guardian ad litem recommended termination and, while we are not bound by them, such experts' recommendations are afforded some weight. See In Interest of Osborn,

220 N.W.2d 632, 633-34 (Iowa 1974). The children have been in foster care for over a year and a half with very infrequent contact with their mother. It is doubtful that the youngest even know L.S.G. to be their natural mother. L.S.G. has made absolutely no showing that she would sincerely work to establish an appropriate home for these children. We refuse to return them to such a tentative living situation. As has been noted repeatedly, "[o]ur termination statute is preventative as well as remedial and does not require delay until after harm has been done." O'Neal, 303 N.W.2d at 423. Accordingly, we affirm the termination of L.S.G.'s parental rights.

AFFIRMED.