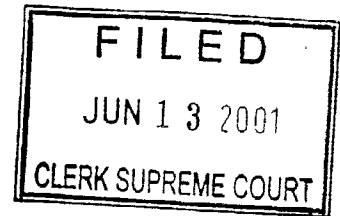


IN THE COURT OF APPEALS OF IOWA

No. 1-229 / 00-1083
Filed June 13, 2001



IN THE INTEREST OF Z.H., L.H., E.H., and D.P.,
Minor Children,

T.M.H., Mother,
Appellant.

Appeal from the Iowa District Court for Des Moines County, Thomas R.
Brown, District Associate Judge.

The mother of four minor children appeals a district associate court order
terminating her parental rights. **AFFIRMED.**

· William R. Monroe III, Burlington, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Mona Clarkson, Assistant County Attorney, for appellee State.

Steven R. Hahn of Bauer, Schulte, Hahn, Swanson & Brown, Burlington,
guardian ad litem for minor children.

Heard by Vogel, P.J., and Zimmer and Hecht, JJ.

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HECHT, J.

Theresa H. appeals a district associate court order terminating her parental rights. She argues (1) the State failed to offer her reasonable services to achieve reunification, and (2) this case should be remanded to the district court for the taking of further evidence relevant to the best interests of the children. We affirm.

I. Factual Background and Proceedings. Theresa is the mother of four children: Elizabeth, born December 5, 1991; Logan, born December 18, 1992; Zechariah, born June 28, 1998; and Donovan, born November 16, 1997. The interests of the four fathers of the children are not at issue in this appeal. The family first came to the attention of the Department of Human Services (DHS) in 1994, when Elizabeth and Logan, then ages two and one, respectively, wandered away from home unattended. DHS offered homemaker services at that time, but Theresa refused to accept them.

The family again came to the attention of DHS in 1997. At that time, Theresa and her three children were living in an apartment with Theresa's mother, her sister, Jean, Jean's two children, Theresa's boyfriend, Brandon, and Brandon's cousin. Brandon is the father of Theresa's youngest child, Donovan. In the summer of 1997, Theresa was arrested and convicted of sexual abuse. The charge stemmed from an incident in which she photographed Brandon engaging in oral sex with a fourteen-year-old boy. Theresa was sentenced to a term of incarceration. After Theresa was imprisoned, her children continued to live with their maternal grandmother, Peggy.

The children were removed from Peggy's home in January of 1999, after six founded child abuse reports were filed against Peggy and Jean based on inadequate supervision of the children and deplorable living conditions in the home. All four children were adjudicated children in need of assistance in August of 1999. The State filed a petition to terminate Theresa's parental rights on February 24, 2000.

The district court terminated Theresa's parental rights with respect to the two older children pursuant to Iowa Code section 232.116(1)(e) (1999).¹ Her parental rights to the two younger children were terminated pursuant to section 232.116(1)(g)(1999).²

II. Standard of Review. We review termination proceedings de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for

¹ This section states the grounds for termination as:

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102. Iowa Code § 232.116(1)(e).

² This section states the grounds for termination as:

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 the custody of the child's parents as provided in section 232.102 at the present time. Iowa Code § 232.116(1)(g).

termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993).

III. Termination of Parental Rights.

A. *Reasonable Efforts.* Theresa claims the district court's denial of her visitation request precluded any chance for reunification with her children. The State must provide reasonable services to reunite a family before terminating parental rights, but the parent is responsible for demanding services if they are not offered. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa Ct. App. 1994); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa Ct. App. 1993). Our supreme court has required parents object to the level of services early in the intervention process so appropriate changes can be made. *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000). At the latest, a parent is obligated to request other, different, or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999); see generally, Iowa Code § 232.102.

In this case, we note Theresa has been incarcerated since August, 1997 and her earliest release date is July, 2001. Her children, one of whom was born after Theresa's incarceration, were adjudicated CINA in August of 1999. To her credit, Theresa both requested supervised visitation and objected to the district court's order denying it. However, her request for visitation was not made until more than two years had passed since she last saw the children, and the case plan had already shifted from a goal of family reunification to termination of

parental rights. Although visitation was the only DHS service potentially available to Theresa as an incarcerated parent, the agency is not to be faulted for this lack of options. *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000); *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997).

In addition, DHS expended significant resources to preserve the family unit in Theresa's absence. The four children were court-ordered to remain with their grandmother. Homemaker services, family counseling, skill development, and protective day care were provided. DHS even constructed a fence in the family's backyard to prevent the children from wandering off. In all, the department spent tens of thousands of dollars to maintain this relative placement, ranking it, in the opinion of one experienced DHS social worker, among the most expensive and exhaustive she had known. The district court correctly concluded DHS made reasonable efforts to reunite the family.

B. Clear and Convincing Evidence. Theresa challenges the sufficiency of the evidence to establish termination is in the best interest of the children. She contends the harm of returning the children to her care has not been adequately demonstrated, and requests us to remand the case to the district court for the taking of further evidence on the issue of whether "the harm to [the children] caused by [her] exceeds the harm . . . caused by termination."

Iowa Code sections 232.116(1)(e)(4) and (g)(4) require clear and convincing evidence the children cannot be returned to the parent's custody at the present time. This standard is met where the child cannot be protected from harm justifying a CINA adjudication. Iowa Code § 232.102(5)(b); *In re M.W.*, 458

N.W.2d 847, 850 (Iowa 1990). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). We look to the child's long range, as well as intermediate, interests and consider what the future holds for the child if returned to his or her parents. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). The grounds alleged for the termination of parental rights must be proven by clear and convincing evidence. Iowa Code § 232.114(5)(c) (1999). We affirm the district court's ruling if we find grounds to terminate parental rights under one or more of the statutory sections relied upon in that court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

When, as here, the statutory time standards of sections 232.116(1)(e) and (g) have been met, the case is to be viewed with urgency. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). At the time of termination, Theresa still faced fourteen months of incarceration. It is anticipated after discharge from prison, she will be required to spend time in a halfway house setting and work to achieve economic self-sufficiency. Her plan to work full-time and attend college at night after discharge could take several years and will leave little time for her four children.

As Theresa candidly conceded in her testimony, the children should not have to wait that long. Patience extended to parents can quickly translate into intolerable hardship for children. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). We find the best interests of the children require the legislatively-determined intervals regarding termination of parental rights be followed. Theresa's four children are adoptable and can anticipate successful placements. Elizabeth is "learning to be a kid" in foster care; her brother Zechariah, who failed speech

evaluations prior to the CINA adjudication, no longer appears developmentally delayed. Such progress will be jeopardized, however, if the children's status remains uncertain. The risk of harm to the children from further delay is clear, particularly given that Theresa has never successfully supported herself and the four children on her own. "Children simply cannot wait for responsible parenting. It must be constant, responsible and reliable." *In re L.L.* 459 N.W.2d 489, 495 (Iowa 1990). Theresa's intentions for post-incarceration personal development appear genuine and are laudable. However, her children have remained in limbo long enough and can no longer wait for her to get out of prison, complete relapse prevention, maintain employment, secure a home, and establish herself as a suitable parent. Accordingly, we affirm the termination of Theresa's parental rights.

· · **AFFIRMED.**