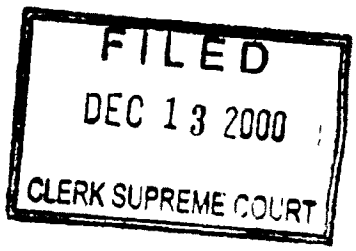
IN THE COURT OF APPEALS OF IOWA

No. 0-562 / 99-1284
Filed December 13, 2000



IN THE INTEREST OF
D.G., J.V., and A.G., Minor Children,

N.A.T., Mother,
Appellant.

Appeal from the Iowa District Court for Tama County, Jane Spande, Judge.

Mother appeals from an order terminating her parental rights to three of her children. She contends the court erred in concluding that she had not maintained significant and meaningful contact with the children and that the State had provided reasonable efforts to preserve and unify the family. **AFFIRMED.**

Raymond L. Reel of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown; for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Brent Hereen, Assistant County Attorney, for appellee-State.

Nancy Burk, Toledo, guardian ad litem for minor child.

Heard by Streit, P.J., and Vogel and Miller, JJ.

MILLER, J.

N.A.T. (Necola) appeals a juvenile court order terminating her parental rights to her three minor children. Necola contends the juvenile court erred in concluding she had not maintained significant and meaningful contact with her children, that the children could not be returned to her custody at the time of hearing, and that the State had provided reasonable efforts to preserve and unify the family. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS

Necola is the biological mother of three minor children: Devin, born March 21, 1991; Juanita, born June 20, 1994; and Alexis, born June 9, 1997. The fathers of Devin and Alexis are unknown.[1] The father of Juanita is Juan. The fathers' interests are not at issue in this appeal.

Necola and her older two children first came to the attention of the Department of Human Services (DHS) in 1995 when a report of denial of critical care-improper supervision was founded after Necola left Devin and Juanita in the care of a babysitter and did not return to pick up the children. No juvenile court action or change of care occurred at that time.

Necola and the children again came to the attention of the DHS in February 1996 in Black Hawk county when she left Juanita for an extended period of time in the care of relatives and Devin with a teenage babysitter. A founded report of denial of critical care was issued and a CINA petition was filed.

[1] At the termination hearing Necola for the first time identified the alleged fathers of Devin and Alexis. However, due and legal notice had been given by publication to any possible fathers of these children and no one appeared claiming an interest in them at the termination proceedings, nor was the truth of Necola's statements about the alleged fathers ever confirmed by DHS or the court. Thus, the biological fathers of Devin and Alexis are still legally unknown at this time and will be treated as unknown. The termination of the biological fathers' parental rights is not before us on appeal.

The children were placed in foster care for approximately eight days before being returned to Necola based on her expressed willingness to cooperate with family preservation services. She did not do so and instead moved from Black Hawk County to Tama County. An emergency removal order was entered in Black Hawk County in March 1996 transferring custody of Juanita and Devin to the DHS based on Necola's failure to follow through with the necessary services. This order was not enforced and the CINA petition was eventually dismissed in December 1996 because of the DHS's lack of information as to the whereabouts of the family as of that time.

In July 1997 relatives with whom the children had been residing placed all three with Necola's aunt, Rebecca, in Tama, Iowa. At that time Necola had no permanent home of her own, was unemployed and was not receiving any child support from any of the children's fathers. In September 1997 Rebecca contacted the Tama County Attorney alleging Necola was not properly supervising the children, she had no means to support them, and requested court action to allow her to maintain custody of the children. A child in need of assistance petition was then filed in Tama County concerning all three children in September 1997. All of the children were adjudicated in need of assistance in October 1997 pursuant to Iowa Code section 232.2(6)(g) (1997) upon stipulations by Necola, Devon's putative father, and Juanita's father that they had failed to exercise a minimal degree of care in providing for the children. Custody of Devin, Juanita and Alexis was formally placed with Rebecca in December 1997. Necola was living with her Aunt Peggy at the time.

The case permanency plans adopted in the CINA proceedings provided several goals for Necola to achieve in order to help alleviate her problems in taking care of her children and achieve family reunification. The case permanency plan was reviewed several times but continued to have essentially the same goals for Necola throughout the relevant timeframe. Necola was to establish a stable residence suitable for the children, she was expected to accept responsibility for her actions and the consequences of those actions, obtain and maintain employment or complete a GED program to better assure an ability to meet her children's physical needs on a long term basis, have weekly supervised visits with the children, maintain contact with the DHS, cooperate with skill development services, obtain a substance abuse evaluation within three months and follow any treatment recommendations therein, and receive domestic abuse counseling.

The record shows that reviews regarding Necola's progress in achieving goals occurred in December 1997, February 1998, May 1998, December 1998, and February 1999. DHS continually found Necola had failed to comply with the requirements of the case permanency plan and had made little or no progress towards achieving the goals set for her in the plan and reunifying her family. On January 7, 1999 the State filed petitions on behalf of all three children requesting both Necola's and the biological fathers' parental rights be terminated, pursuant to Iowa Code sections 232.116(1)(b), (c), (d), (e) and (h) as to Devin and Juanita and pursuant to Iowa Code sections 232.116(b), (c), (d), (g) and (h) as to Alexis. Following trial the juvenile court entered a decree terminating Necola's, as well as the biological fathers', parental rights to Devin and Juanita, pursuant to Iowa

Code sections 232.116(1)(d) and (e), and to Alexis pursuant to Iowa Code sections 232.116(1)(d) and (g).

Necola appeals contending the State failed to show she has not maintained significant and meaningful contact with the children and that the children could have safely been returned to her custody at the time of the termination hearing. She alleges that at the time of the termination hearing she had changed her situation to eliminate the conditions which required the removal of the children in the first place. Necola states that she had a nice place for the children to live, she was sober and contributing financially to the family, and she had a stable relationship. Additionally, she alleges she had consistent visitation with the children for the most part and those visitations she missed were due to transportation problems, the interference of Rebecca, the cancellation of appointments by the DHS, and her pregnancy resulting in the birth of her child, Erica, on December 14, 1998. Necola further argues the State failed to provide reasonable services and efforts to her in order to preserve and unify the family unit.

II. STANDARD OF REVIEW

We review termination proceedings de novo. Iowa R. App. P. 4; *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* The grounds for termination must be proven by the State by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997). Our

primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

III. MERITS

Necola has conceded that the first two of the three elements for termination under section 232.116(1)(d) have been proven, that the first three of the four elements for termination under section 232.116(1)(e) have been proven, and the first three of the four elements for termination under section 232.116(1)(g) have been proven. The fourth elements of sections 232.116(1)(e) and 232.116(1)(g) are nearly identical. Therefore, the remaining issues we must determine are (1) whether the State proved, by clear and convincing evidence, that Necola failed to maintain "significant and meaningful contact with the children during the previous six consecutive months and made no reasonable efforts to resume care of the [children] despite being given the opportunity to do so," as required by the third element of section 232.116(1)(d), and (2) whether there was clear and convincing evidence that at the time of the termination hearing the children could not be returned to the custody of Necola as provided in section 232.102, as required by the fourth elements of sections 232.116(1)(e) and 232.116(1)(g). Necola contends the State failed to prove both of these elements. We disagree.

The controlling standard applied in cases involving the termination of parental rights is the best interest of the children involved. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for the performance

> may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to the child.

In re R.K.B., 572 N.W.2d 600, 601 (Iowa 1998) (quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa App. 1993)). It is well established there exists a parental interest in maintaining the integrity of the family unit. *In re Dameron*, 306 N.W.2d at 745. This interest, however, is not absolute and may be forfeited by certain parental conduct. *Id.* The State has a duty to assure that every child within its boarders receives proper care and treatment and it must intercede when parents abdicate that responsibility. *Id.* DHS must make reasonable efforts to reunify the family and provide services prior to termination. *See* Iowa Code section 232.102(5) (1999); *In re A.Y.H.*, 508 N.W.2d 92, 95 (Iowa App. 1993).

When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by that court to affirm the termination. *In re S.R.*, 600 N.W.2d at 64. In this case, however, we find clear and convincing evidence supports the juvenile court's decision to terminate Necola's parental rights as to Devin and Juanita under both sections 232.116(1)(d) and 232.116(1)(e) and as to Alexis under both sections 232.116(1)(d) and 232.116(1)(g). We will address each of these sections separately.

A. Section 232.116(1)(d)(3)

"Significant and meaningful contact" for purposes of the third element of Iowa Code section 232.116(1)(d) includes, but is not limited to, the affirmative assumption by the parent of the duties encompassed by the role of being a parent. Iowa Code § 232.116(1)(d)(3) (1999). This affirmative duty, in addition

to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and that the parent establish and maintain a place of importance in the child's life. *Id.* Based on our review of the entire record, we conclude Necola has failed to substantially perform any of these duties successfully.

Necola has failed to meet several of the requirements of the case permanency plan. She failed to complete a substance abuse evaluation or failed to provide verification of such an evaluation, she failed to participate in domestic abuse counseling, she failed to notify DHS when she was moving, she has not completed GED classes, and she has not found and maintained stable employment. While she has established a semi-permanent residence with her current boyfriend and is making some money through in-home babysitting, unfortunately she remains financially dependent upon her boyfriend, an illegal immigrant, to meet the rent obligations and other basic living expenses. Therefore, Necola's residence is far from independent, safe, or secure, and her job and income are made significantly more insecure by the fact she is dependent on a person who is in the country illegally.

Furthermore, Necola has not maintained at least weekly visitation with the children. The juvenile court found:

> Visitations have been a chronic problem for the children. So many visits were missed that it eventually became necessary for Necola to call in advance to confirm a visit so that the children would not be unnecessarily transported and disappointed when their mother did not arrive. Many excuses are offered for those missed visits.

It also noted that one goal of the case permanency plan was for Necola "to accept responsibility for her actions and the consequences of those actions," and she had wholly failed to achieve that goal. We agree with the findings of the juvenile court. The record shows a consistent pattern, beginning in early 1998, of missed visitations as well as fewer and fewer visitations. In fact, between November 19, 1998 and the end of April 1999 Necola had visited the children only twice, with one of those visits occurring only after the termination petition had been filed. The caseworker indicated that at those two visits the relationship between Necola and the children was not healthy. The reasons alleged by Necola for the missed visitations include transportation problems, interference from Rebecca, and cancellation of the visits by DHS. While some of these reasons may be valid, for the most part they have arisen due to Necola's own actions and the consequences of those actions.

Obviously her lack of a driver's license and residence in a county different than the children makes visitation difficult. However, she lost her license because she was driving while intoxicated, and she is not required to live in a different county than her children live in. These are examples of voluntary choices she has made and the consequences arising from those choices.

There is also evidence in the record suggesting that Rebecca frustrated some visits by stating an intent to contact law enforcement if either Necola or her boyfriend drove to the visit, or if certain other third parties were present during the visit. However, again it must be noted that Necola's lack of a driver's license is a consequence of her own actions and choices. The same is true concerning

the persons with whom she associates and whom she brings to the visits. We fully agree with the juvenile court's findings that:

> Necola [ ]continually places her needs and desires above the needs and best interests of her children. . . . Maintaining the relationship between Necola and her boyfriends, past and present, continues to prejudice Necola's ability to meet the physical and emotional needs of her children in other ways. Necola previously missed one visit with her children because of her boyfriend's threat to leave her if she attended the visit. She later missed three more visits with her children because she was hiding out with her boyfriend after an INS raid at his place of employment.

The reasons offered for the missed visitations show Necola continues to have a problem in the acceptance of responsibility for her actions and the consequences thereof. Clearly she has not met this goal of the permanency plan.

We find there to be clear and convincing evidence demonstrating Necola had failed to maintain significant and meaningful contact with her children as defined in Iowa Code section 232.116(1)(d)(3).

B. Sections 232.116(1)(e) and (g)

The fourth element of section 232.116(1)(e) requires proof that the children cannot be returned to the parent because the child remains in need of assistance as defined in section 232.2(6). *In re E.B.L.*, 501 N.W.2d 547, 550 (Iowa 1993). *In re R.R.K.*, 554 N.W.2d 274, 276-77 (Iowa app. 1995). Because the fourth element of section 232.116(1)(g) is nearly identical, it requires the same proof. If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination under these sections. *In re R.R.K.*, 544 N.W.2d at 277. The juvenile court stated in its conclusions:

> These children are at imminent risk of emotional and physical harm if their past history of instability in caretakers or residence reoccurs.

> It is time for these children to move on with their lives. Both parents have been offered or provided necessary services to effect the goal of family reunification without *significant* change in the situation of either parent within a reasonable time. Lack of significant progress is based upon a lack of commitment to these children by their parents, not by inappropriate or unavailable services. Necola is only now working on her GED and seasonally employed, unable to solely support herself and the child in her care much less additional children. She has consistently failed to place the physical and emotional needs of these children above her own needs and desires and because of that failure, Devin, Juanita and Alexis remain in need of assistance as defined by Iowa Code section 232.2(6).

Our review of the entire record supports the juvenile court's conclusions. Based on the reasons stated by the trial court and all of the reasons stated above we conclude the children could not have been returned to Necola's custody at the time of the termination hearing as they were still in need of assistance under Iowa Code section 232.2(6).

C. Reasonable Efforts

Finally, in an effort to excuse her inability to have the children returned to her custody and her failure to maintain significant and meaningful contact with them, Necola contends the State did not make reasonable efforts and provide reasonable services to assure reunification of her family as required by Iowa Code section 232.102(5).

While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d at 65; *see also In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d at 781. When the parent alleging inadequate services fails to demand

services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *In re S.R.*, 600 N.W.2d at 65.

There is no evidence in the record Necola raised this issue prior to the termination proceeding or that she demanded additional or different services. Therefore, we conclude the issue of whether adequate services were provided has not been preserved for appeal. Furthermore, even if Necola had preserved error on this issue we would fully agree with the juvenile court that the necessary services were available and provided to her by the DHS.

IV. CONCLUSION

Based on our de novo review of the entire record we conclude Devin, Juanita and Alexis continued to be children in need of assistance at the time of the termination hearing under Iowa Code section 232.2(6) and that Necola failed to maintain significant and meaningful contact with her children. Therefore, we agree with the juvenile court that the parental rights of Necola should be terminated as to Devin and Juanita under Iowa Code sections 232.116(1)(d) and 232.116(1)(e), and as to Alexis under Iowa Code sections 232.116(1)(d) and 232.116(1)(g).

AFFIRMED.