

IN THE COURT OF APPEALS OF IOWA

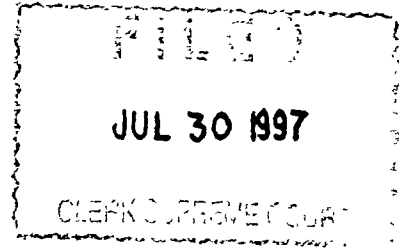
No. 7-320 / 96-2299

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IN THE INTEREST OF K.D., Minor Child,

K.D., Mother,
Appellant,

M.D., Father,
Appellant.



Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

The parents of a minor child appeal a juvenile court order terminating their
parental rights. **AFFIRMED.**

Ryan Moorman, West Des Moines, for appellant mother.

Nancy L. Pietz of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for
appellant father.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Cory McClure, Assistant County Attorney, for appellee State.

Kim Ayotte, Des Moines, guardian ad litem for minor child.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

HUTTINK, J.

Katherine and Mark were married in 1987. They are the parents of Kara, born February 28, 1992. They appeal the termination of their parental rights. We affirm the decision of the juvenile court.

Katherine has two other children from previous relationships who also lived with the family. Mark was convicted of child endangerment for beating one of these children. There were several founded reports of physical abuse or neglect from the parents. The family received services from the Department of Human Services (DHS) until 1991.

In October 1994, Katherine took the children to a shelter because she and the children were being physically abused by Mark. When she returned to the home with the children, the State obtained a temporary removal order. The children were placed in foster care. DHS issued a founded report of denial of critical care against Katherine for failing to protect the children. On December 28, 1994, Kara was adjudicated to be a child in need of assistance.

The family resumed services with DHS. Katherine and Mark were required to obtain psychological and parenting evaluations. Mark has been diagnosed as having an antisocial personality disorder and a mixed personality disorder. Katherine has been diagnosed with chronic depression. She also has a dependent personality disorder. Both parties attend individual counseling.

The parties were required to obtain substance abuse evaluations and follow recommended treatment. Mark is an alcoholic. He also has a history of abusing illegal substances. He attended substance abuse treatment in July 1995. He has had several lapses in sobriety. Katherine had been using methamphetamine. She attended substance abuse treatment in September 1995. She has had negative urinary analysis reports since treatment, but has not consistently provided these reports.

On December 6, 1995, DHS recommended that as long as Katherine was at a half-way house, visitation with Kara would be extended in an effort to work toward reunification. By December 17, 1995, however, Katherine was discharged from the half-way house for breaking the rules by smoking a cigarette in her room. Social workers had expressed concerns about the visits because Katherine continued to smoke around Kara, who has asthma. Also, Kara would act out after visits. Visits were terminated in February 1996 due to allegations Mark had sexually abused Kara. These allegations were determined to be unfounded, and the parties resumed supervised visitation.

In February 1996, Katherine made a suicidal gesture after an argument with Mark. She threatened to jump from a moving vehicle. She received in-patient psychiatric treatment for about three weeks. Mark tested positive for marijuana in April and July 1996. He was hospitalized for drinking in August 1996, and had a relapse in sobriety in September 1996.

There has been little stability in the parties' lives while this case was pending. The parties have separated, and then gotten back together. They have each moved several times. Neither party has been consistently employed.

On June 24, 1996, the State filed a petition to terminate the parental rights of Katherine and Mark. At the termination hearing, Mark admitted he could not care for Kara at the present time, and asked that she be placed in the care of Katherine. Katherine sought to receive custody of Kara. The juvenile court terminated Katherine's parental rights under Iowa Code sections 232.116(1)(c) and (e). Mark's parental rights were terminated under sections 232.116(1)(e) and (k). Both parents have appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Katherine and Mark claim the State did not engage in reasonable efforts to reunite them with Kara. In particular, they claim they should have had greater visitation. The parents had progressed to having unsupervised weekend visits when the allegation of sexual abuse arose. At that time visitation was stopped. Although

the allegation was determined to be unfounded, when visitation resumed, the parents received only limited supervised visitation each week.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). We consider the following factors: relevance of services, adequacy of services, coordination of services, accessibility of services, and diligence of effort. *Protocol on Reasonable Efforts to Maintain Children in Their Own Homes*, A Joint Project by the Iowa Supreme Court and the Iowa Department of Human Services (1994). The determination of whether services have been reasonable is based on the unique circumstances of each case. *Id.*

The decision to limit visitation was based on many factors. The parents were still having an unstable relationship. Mark continued to drink. Katherine was still struggling with her depression. The parents were not meeting regularly with their therapist and were not providing urinary analysis reports as requested. Furthermore, Kara had a high level of anxiety regarding visitation. Based on the circumstances of this particular case, we find the services offered were reasonable.

III. Katherine contends the State did not adequately prove the elements of subsection 232.116(1)(c)(2). This subsection provides:

(2) Subsequent to the child in need of assistance adjudication, the parents were offered services to correct the circumstance which led to

the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Katherine asserts that many of the circumstances which existed at the time of the CINA adjudication have improved. She testified she had maintained her sobriety since September 1995 and she had a greater understanding of her depression. She also testified she had separated from Mark and was planning to file for divorce.

Although Katherine has made some progress, many of the circumstances which existed at the time of the CINA adjudication continued to exist. Katherine was unemployed and did not have independent housing. She continued to move regularly. In addition, there was a question concerning the permanence of her separation from Mark because the parties had separated many times in the past. Katherine must have continuing therapy for her depression. We find there is clear and convincing evidence to support the termination of Katherine's parental rights under section 232.116(1)(c).

IV. Katherine claims the State did not adequately show Kara could not be returned to her care. This correlates to section 232.116(1)(e)(4), which requires the State to show clear and convincing evidence that the child cannot be returned to the custody of the parents at the present time.

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 the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). We have

already found Katherine's parental rights were properly terminated under section 232.116(1)(c). Therefore, we need not address this issue.

V. Mark claims the State did not show by clear and convincing evidence that his parental rights should be terminated. We find Mark's parental rights were properly terminated under section 232.116(1)(e). Kara was four years old. She had been adjudicated a child in need of assistance. She had been removed from the care of her parents for two years. Mark admitted Kara could not be returned to his care at that time.

We have already found Mark's parental rights were properly terminated under section 232.116(1)(e), and, therefore, need not address the issue of whether his parental rights were properly terminated under section 232.116(1)(k).

We affirm the decision of the juvenile court terminating Katherine and Mark's parental rights to Kara. We determine this termination is in Kara's best interests.

AFFIRMED.

Vogel, J., concurs; Sackett, P.J., specially concurs without opinion.