

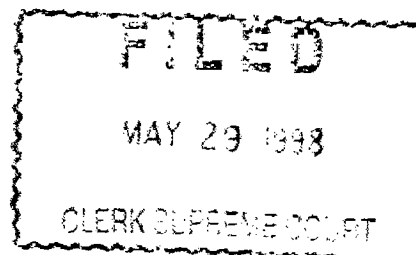
IN THE COURT OF APPEALS OF IOWA

No. 8-181 / 97-1597

IN THE INTEREST OF R.A.G., II
a/k/a R.A.G., Jr., Minor Child,

R.A.G., Sr., Father,
Appellant,

S.G.H., Mother,
Appellant.



Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, District Associate Judge.

The parents, R.A.G., Sr., and S.G.H., appeal from the termination of their parental rights to R.A.G., Jr. **AFFIRMED.**

William F. McGinn of McGinn, McGinn, Jennings & Springer, Council Bluffs, for appellant-father.

Drew H. Kouris, Council Bluffs, for appellant-mother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Martha Heinicke, Assistant County Attorney, for appellee.

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

SACKETT, P.J.

Richard and Shayne, the parents of Ricky, who was born in October 1992, appeal the juvenile court decision terminating their parental rights. Richard asks us to revoke his voluntary consent to the termination. Shayne asserts: (1) she should have been granted a continuance, and (2) the State failed to present clear and convincing evidence supporting the termination. We affirm.

Richard and Shayne were married in 1991. Shayne is physically and mentally handicapped. Richard was incarcerated at the time Ricky was born.

The Department of Human Services became involved with this family in July of 1993. Shayne had left Ricky with a babysitter saying she would be back in a few hours. Shayne had been gone two days when the babysitter called the police.

Ricky was subsequently found to be a child in need of assistance and taken into State care, placed in a facility, a foster home, another facility, and finally in a foster care home on August 23, 1993, where he has remained. At that time, Shayne wanted to enter a shelter in Omaha that could not take Ricky. Shayne later moved from Nebraska to Kansas, to Georgia, and then back to Nebraska. Richard and Shayne were divorced. Shayne did not see Ricky from November 1993 until October 1994.

In October 1994, Shayne resumed contact with Ricky. A psychological evaluation concluded, due to her limited intellectual abilities, Shayne would probably need ongoing supervision. Shayne was given weekly supervised visitation with Ricky and entered counseling.

In April 1995, the State pursued a plan it termed "intensified reunification." The plan provided Shayne have visitation with Ricky in her home for two hours twice a week for thirteen weeks. After thirteen weeks, Shayne's therapist recommended reunification should not be pursued because Shayne was not able to provide Ricky with what the therapist defined as a safe, secure, predictable environment. The therapist found Shayne's home neat and clean, and that she provided appropriate activities for Ricky during visitation. She reported Shayne needed some prompting in providing nutritious meals.

Shayne has a hearing loss making it difficult for her to hear and understand Ricky.¹ Ricky at times was frightened by Shayne's voice. Shayne had problems dressing Ricky due to weakness in her right arm. Shayne sometimes was preoccupied and would not pay attention to Ricky. Shayne gave Ricky affection. He did not respond in kind. One therapist said Ricky was not bonded with Shayne and the visits were traumatic for him.

Shayne is not able to manage money or drive. Shayne's limited intelligence precludes her from developing the degree of understanding and skills a person of average intelligence would have.

¹ There is no evidence any efforts were made to supply Shayne with a hearing aid.

In October 1995, Richard, still in prison, consulted an attorney and signed a consent to the termination of his parental rights. Richard met Ricky briefly before he agreed to the termination.

In March 1996, it was reported Shayne became argumentative during a visit. It was reported she was disruptive during a visit in April 1996. These problems understandably were upsetting to Ricky. Services were suspended for Shayne in May 1996, as were visitations. On February 17, 1997, the State filed a petition to terminate the parental rights of Richard and Shayne.

Richard was released from prison in April 1997 and moved in with Shayne. Richard and Shayne sought custody of Ricky. Supervised visitation resumed in May 1997.

Shayne filed a motion to continue the termination hearing. Richard sought to revoke his consent to the termination. The matter proceeded to a hearing on June 30, 1997. Richard and Shayne testified they intended to remain together and wanted to raise their son. The juvenile court terminated Richard's parental rights pursuant to Iowa Code section 232.116(1)(a). Shayne's parental rights were terminated pursuant to section 232.116(1)(e). Richard and Shayne have appealed.

I. Scope of Review. 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 E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997).

II. Richard. Richard asserts the juvenile court should have allowed him to revoke his consent to the termination of his parental rights. Richard alleged he smoked three or four joints of marijuana before he consented to the termination and the marijuana affected his judgment.

Parental rights may be terminated under section 232.116(1)(a) where a parent voluntarily and intelligently consents to the termination of parental rights and the parent-child relationship and for good cause desires the termination. *In re T.N.M.*, 542 N.W.2d 574, 575 (Iowa App. 1995). In order to revoke a release, a party should show the release did not meet fair play, disclosure, and due process requirements. *Id.* at 576. The question is whether the release was voluntarily and intelligently given, and whether there was good cause to desire the termination. *Id.* at 577. Whether a party revokes the consent at the time of the termination hearing is not dispositive. *Id.*

Richard's attorney, who met with him about one hour at the time the consent was signed, testified Richard did not appear to be under the influence of an intoxicant when he signed the consent. Richard wrote a letter in which he advanced his concern for his son, his alliance with the State's position, and his feeling that Shayne was not able to care for Ricky.

The juvenile court found no evidence Richard's mental ability had been affected or his judgment impaired when the consent was signed. We affirm the decision of the juvenile court denying Richard's motion to revoke his consent to the termination.

We affirm the termination of Richard's parental rights under section 232.116(1)(a). Because we have affirmed the termination of Richard's parental rights based on section 232.116(1)(a), we do not consider his arguments based on section 232.116(1)(e).

III. Shayne. Shayne contends the juvenile court should have granted her motion for continuance because she and Richard had recently reconciled. She contends the juvenile court should have given them more time to develop into a family with Ricky. She also asked for more time to complete a parenting evaluation and to participate in visitation.

We review a motion to determine if the juvenile court abused its discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). To show an abuse of discretion, a party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987).

The juvenile court did not abuse its discretion in denying Shayne's motion for continuance. The petition for termination of parental rights was filed on February 17, 1997. A motion for continuance was filed on March 25 by Shayne's attorney contending he was not prepared for trial. The court granted this motion, and the termination hearing was postponed from April 1 until May 19, 1997.

On April 15, 1997, Shayne filed a second motion to continue asserting: (1) she needed more time to complete a parenting skills evaluation; (2) the Department of Human Services should provide transportation so she could visit Ricky; and (3) the

case should be transferred to Nebraska. This motion to continue was denied. Yet, because Richard sought to revoke his consent to the termination, the hearing was postponed until June 30, 1997. At the termination hearing, Shayne's attorney orally renewed her motion to continue. This motion was again denied. The trial court did not abuse its discretion in denying the oral motion for continuance.

Shayne claims the State failed to produce sufficient evidence that at the present time Ricky cannot be returned to her custody as required by Iowa Code section 232.116(1)(e)(4). Shayne and Richard live together, and Shayne believes they can care for Ricky. The parents have a monthly income of \$2000 and they have health insurance which would cover Ricky.

Shayne's mental and physical disabilities render her unable to care for this child. While it is easy to fault her, the record does not reflect that services were ever directed to her level of understanding. Shayne is not capable of being an average parent. In August 1995, a service provider reported:

Shayne appears to love her son, Ricky, and was usually very attentive to him during the visits. However, there were numerous indicators that Ricky's needs are greater than Shayne's abilities.

The issue of services Shayne would require on a continual basis was never raised in the juvenile court, nor is it raised on appeal. Nowhere has there been a request for the specific type of services Shayne needs.

Ricky was placed in foster care in August of 1993. Nearly five years have passed in which he has been in State care. During that time, he has been in four

placements, the last a foster care home since August 23, 1993. The State advances it has engaged in what it terms "intensive reunification efforts." Despite the State's resources and alleged expertise, these efforts have failed. In June 1995, after two years in State care, Ricky had a psychiatric evaluation and was diagnosed with attention deficit hyperactivity disorder and oppositional defiant disorder. Ricky had a behavioral assessment with a licensed social worker, who found Ricky had some self-destructive behaviors and was aggressive with other children.

The State has met the statutory ground for termination of Shayne's parental rights under section 232.116(1)(e). We affirm the juvenile court on this issue.

There is suggestion Ricky's foster parents will give consideration to adopting him. They have been a stable influence in his life and should be a part of any placement plan.

AFFIRMED.