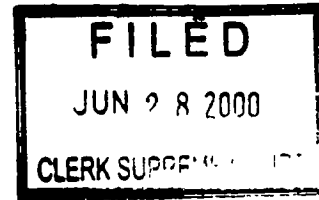


IN THE COURT OF APPEALS OF IOWA

No. 0-285 / 99-969
Filed June 28, 2000



IN THE INTEREST OF
K.K., Jr., R.W., J.C.W., and J.W.,
Minor Children,

C.W., Mother,
Appellant.

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

Mother appeals the juvenile court's order terminating her parental rights to
her four children. **AFFIRMED.**

David C. Pulliam of Wasker, Dorr, Wimmer & Marcouiller, P.C., Des
Moines, for appellant.

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

Christopher A. Kragnes, Sr. of Law Offices of Christopher A. Kragnes, Sr.,
P.C., Des Moines, guardian ad litem for minor children.

Maria Ruhtenberg, Des Moines, for appellee-maternal grandmother.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

000124

HUTINK, J.

Christine appeals the decision of the juvenile court that terminated her parental rights to her four minor children. She claims the district court abused its discretion by denying her request for a continuance. She also claims there is not sufficient evidence in the record to support termination of her parental rights. We affirm on appeal.

Christine is the mother of Matthew, born in September 1991; Ricky Jr., born in July 1993; J.C., born in April 1995; and Jenna, born in December 1997. Kevin is the father of Matthew, and Ricky is the father of Ricky Jr., J.C., and Jenna. Christine and Ricky were married in 1997.

Christine first came to the attention of the Iowa Department of Human Services (DHS) in November 1995, when a police officer found Matthew in the trunk of Christine's car. Christine stated she was unaware of Matthew's whereabouts, and he may have been in the trunk for up to one hour. DHS issued a founded report of denial of critical care due to this incident.

The children have spent much of their lives in the care of the maternal grandmother, Barbara. Christine has a history of excessive alcohol use and mental health problems. In September 1997 Christine hit Ricky Jr. in the nose, causing it to bleed. DHS issued a founded report of physical abuse concerning Ricky Jr. and denial of critical care concerning all of the children.

After discussing the matter with social workers, Christine agreed to voluntarily place the children with Barbara. The next day, however, Christine took Ricky Jr. and J.C. to Mississippi. About a week later, Christine brought the

children back to Iowa. The children were removed from Christine's care and placed with Barbara. Upon Jenna's birth in December 1997, she was also removed from Christine's care and placed with Barbara.

The children were adjudicated to be children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (child likely to suffer harm due to parent's failure to exercise care in supervising child). Christine was ordered to participate in individual therapy, parenting classes, substance abuse therapy, and couples counseling. She was also to obtain a psycho-social evaluation.

Christine had a substance abuse evaluation, which recommended extended out-patient treatment for alcohol and mental health issues. She attended a residential treatment center, but was discharged against medical advice. Christine obtained a psycho-social evaluation. The evaluation found she suffered from depression and a very low level of self-esteem. It was recommended that Christine participate in a dual-diagnosis program. Christine continued to have incidents of drinking to excess. In April 1998 she was sexually assaulted while intoxicated.

Christine and Ricky moved to Mississippi. A home evaluation in Mississippi in July 1998 did not recommend returning the children to them at that time. Christine began to participate in individual therapy. She relapsed into alcohol use in September 1998 and entered a dual-diagnosis treatment program, which she successfully completed.

In November 1998 Christine temporarily returned to Iowa. She had many visits with the children while she was in Iowa. Christine told social workers she

might be interested in having only Ricky Jr. and Jenna returned to her care. Matthew revealed he had been physically abused by Ricky in the past. He was fearful of being reunited with Christine and Ricky. By December 1998 Christine had returned to Mississippi.

In January 1999 the State filed a petition to terminate the parental rights of Christine, Kevin and Ricky. Christine gave birth to a child, which she gave up for adoption. In February 1999 she attempted suicide. Christine then entered a transitional shelter for homeless women, where she remained at the time of the termination hearing. Group therapy and other services were available at the shelter.

Barbara has expressed an interest in adopting the children. She testified she was willing to provide care and custody of the children until they were eighteen years of age.

The juvenile court entered an order on May 10, 1999, which terminated the parental rights of Christine, Kevin, and Ricky. Christine's parental rights to Matthew were terminated pursuant to sections 232.116(1)(b) (abandonment), (c) (circumstances continue despite services), (d) (lack of significant and meaningful contact), (e) (child cannot safely be returned home), (j) (parent has chronic mental illness), and (k) (parent has substance abuse problem). Her parental rights to Ricky Jr., J.C., and Jenna were terminated pursuant to sections 232.116(1)(b), (c), (d), (g) (child cannot be safely returned home), (j), and (k). The court found the parents were in no better position to provide a safe and stable home for the children than they were at the time the children were first

removed. The court concluded termination of the parents' rights was in the children's best interests. Christine appealed.¹

I. The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). 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). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Christine contends the juvenile court should have granted her motion for a continuance. She was completing a 120-day program at a transitional shelter at the time of the termination hearing, held in March 1999. She stated she would be discharged from the program if she left for any reason and asked to have the termination hearing continued until she completed the program in June 1999.

An appellate court reviews a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). The court will reverse only if injustice will result to the party desiring the continuance. *Id.* In order to show any abuse of discretion, the 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).

We find the juvenile court did not abuse its discretion by denying Christine's motion for continuance. She was able to participate in the hearing by

¹ The guardian ad litem agrees with Christine's contention the State did not present sufficient evidence to support termination of her parental rights under sections 232.116(1)(b) and (d), but argues her parental rights were properly terminated under sections 232.116(1)(c), (e), (g), (j), and (k).

telephone. Also, Christine knew of the date of the termination hearing when she voluntarily entered the program at the transitional shelter.

III. Christine claims the State failed to present sufficient evidence to warrant termination of her parental rights. Sections 232.116(1)(e) (children four or older) and (g) (children three or younger) both require proof, by clear and convincing evidence, the child cannot be returned to the custody of the child's parents at the present time. Christine contends the children could be returned to her care because she was in a shelter for homeless women that would allow the children to live with her. She testified the shelter would provide her with assistance to care for the children.

A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Christine was in a 120-day program at the shelter, which she expected to complete in June 1999. Once she left the shelter she would no longer have the same level of assistance to help her care for the children. Thus, if the children were returned to Christine's care, within a short period of time they would likely be exposed to the same problems which have plagued Christine throughout this case. She continues to struggle with alcohol and mental health problems. The record in this case shows clear and convincing evidence the children could not be safely returned to Christine's care at the present time.

IV. When the juvenile court terminates parental rights on more than one statutory ground, we need only find ground to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citing *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996)). Because we have determined Christine's parental rights were properly terminated under sections 232.116(1)(e) and (g), then we need not address her claims regarding sections 232.116(1)(b), (c), (d), (j), and (k).

V. Christine asserts it was not in the children's best interests to terminate her parental rights. She states she has demonstrated a commitment to establishing a home for the children and the children should be placed with her.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the children in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We find termination of Christine's parental rights is in the children's best interests. Matthew was afraid of his mother and did not want to return to her care. J.C. and Jenna have spent almost all of their lives out of Christine's care and are not bonded with her. The children are bonded with Barbara, and it is hoped she will be able to adopt the children.

At some point, the rights and needs of the children rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Christine ~~has~~ ~~had~~ sufficient time to address her problems, and the children should not be forced to wait longer for her to become a responsible parent.

We affirm the decision of the juvenile court terminating Christine's parental rights to her four minor children.

AFFIRMED.