

IN THE COURT OF APPEALS OF IOWA

No. 1-287/ 91-426

FILED

AUG 27 1991

CLERK SUPREME COURT

IN THE INTEREST OF J.N.K., A Minor Child,
M.K., Mother,
Appellant.

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Appeal from the Iowa District Court for Polk County
Vincent M. Hanrahan, Judge.

The mother of a child appeals from the termination of
her parental rights. **REVERSED AND REMANDED.**

Craig S. Shannon of Grefe & Sidney, Des Moines, for
appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter
and Kathrine S. Miller-Todd, Assistant Attorneys General,
for appellee.

David Adams, Des Moines, guardian ad litem for the
child.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.

The issue in this appeal is whether there is clear and convincing evidence a male child born in July 1988 cannot be returned to his mother and her parental rights should be terminated. We find the State has not met the necessary burden. We reverse and remand.

The child's parents never married. The child's father, who had minimal contact with the child, agrees to the termination if the parental rights of the natural mother are also terminated.

The child was removed from his mother's care because she did not properly supervise him. The mother has suffered from alcoholism and has also abused cocaine. These problems have been the major cause of her deficient parenting. She has been committed to treatment centers without total success. She has lived most of her adult life at the poverty level. The mother claims she has turned her life around. The pivotal question is whether the mother's substance abuse problem is controlled so that she can provide adequate care and supervision of her son.

Our review is de novo. Iowa R. App. P. 4. The question is whether the State has proved by clear and convincing evidence the child cannot be returned home because the definitional grounds of a child in need of assistance as defined by Iowa Code section 232.2(6) has been proven.

The mother commenced a program at the Harold Hughes Center on February 18, 1990, and completed it. On March 20, 1990, she was released to live at the House of Mercy and attended A.A. meetings as a part of her aftercare. There were problems and she did not stay at the House of Mercy.

A petition seeking the termination of her parental rights was filed on September 4, 1990. It came on for hearing on October 24, 1990, and was continued to October 26, and was finally submitted on November 8, 1990. At the hearing the State introduced evidence showing the mother's past problems. The State contended she has not followed through with parenting classes, that she did not exercise sufficient visitation, and that she failed to return the child to foster care following one visitation session.

The mother introduced evidence that as of October 26, 1990, she had been satisfactorily employed at the Carlisle Care Center for nearly three weeks. She testified she has straightened out her life. Her father had died. She was living in a trailer home she had inherited from him. She claimed to have some financial security as a result of the inheritance from him. She testified she was married to a man who offered her security. Her husband did not appear at trial.

The State at trial indicated it believed false testimony had been given. The State asked the trial court

to leave the record open. The mother objected, but the trial court granted the request and the record was left open until November 8, 1990. Neither the State nor the guardian ad litem introduced any additional evidence. The record was closed on November 8, 1990. On February 15, 1991, the trial court entered an order terminating the mother's parental rights.

The mother advances the State has not met the necessary burden. The State contends they have. The guardian ad litem has not taken part in the appeal. We direct the guardian ad litem's attention to In re J.V., 464 N.W.2d 887, 893 (Iowa App. 1990).

The only evidence in the record as to the mother's situation at the time of trial was that the mother had straightened out her life to the degree necessary to take care of her child. The State argues we should not consider this evidence because the State was not aware of the mother's current living situation prior to the hearing, and consequently the State was not able to refute this evidence. We have serious trouble with the State's argument. The State asked for and was given a continuance of over a week after the mother testified. After the continuance, the State introduced no evidence to refute the mother's testimony about her current living conditions, and did not request an additional continuance to gather further evidence. There is no basis on which the State can argue

that they were without adequate time to refute the mother's evidence. Additionally, we remind the State, at a termination hearing it is its burden to prove conditions that exist at that time are such that termination should be granted, and there is clear and convincing evidence the child will suffer harm if returned to his or her parent. In re T.C.D., 336 N.W.2d 738, 740 (Iowa 1983).

The order terminating the mother's parental rights is reversed. The conditions of the father's conditions to termination not having been met, the order terminating his parental rights is vacated.

We remand to the juvenile court to determine what reasonable efforts are necessary to return the child to his mother's care. The father appears to have contributed little to this child's care. His ability to contribute to the child's support should be addressed. We reverse and remand.

REVERSED AND REMANDED.