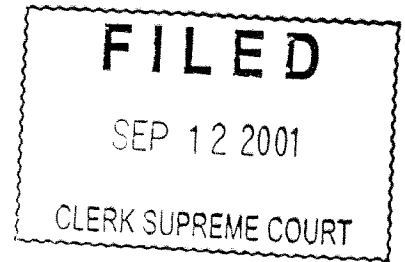


IN THE COURT OF APPEALS OF IOWA

No. 1-499 / 00-512
Filed September 12, 2001



IN THE INTEREST OF C.B. and C.B.,
Minor Children,

L.B., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L.
Block, Associate Juvenile Judge.

The mother of two minor children appeals a juvenile court order
terminating her parental rights. **AFFIRMED.**

Diane Ruisch Larsen, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney
General, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Donna Leysyshen, Waterloo, guardian ad litem for minor children.

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for
father L.C.

Mary E. Kennedy, Waterloo, for father M.K.

Considered by Hayden, C. Peterson, and Harris, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code section
602.9206 (2001).

C. PETERSON, S.J.

Linda, mother of Craig and Casey, appeals the decision and order of the juvenile court terminating her parental rights. Mark, the biological father of Casey, also filed a notice of appeal of the termination of his parental rights, but his appeal was dismissed prior to these proceedings pursuant to Iowa Rule of Appellate Procedure 19(a). Lawrence, the biological father of Craig, does not appeal the termination of his parental rights.

Linda claims the Iowa Department of Human Services failed to use reasonable efforts to reunite the family and that the best interest of the children was to place the children in long-term foster care with a relative or family friend rather than to terminate the parental rights.

Craig and Casey were removed from their parents' care in October 1998 and placed in a foster home when Craig disclosed a detailed account of sexual abuse of both him and his brother by the maternal grandfather. Linda had placed them in the grandparents' home when she was confined in the Black Hawk County Jail. The grandfather had a known history of sexual abuse of children, including a founded determination of sexual abuse of Linda when she was young.

Termination of parental rights proceedings were held January 21, 2000, at which time the juvenile court made extensive findings establishing the basis for termination. The parent-child relationship of the biological parents was terminated by order on March 7, 2000. At that time the boys had been in the same foster home since October 26, 1998. The boys' therapist testified that they

were bonded with their foster parents and recommended that they remain together with their foster parents.

After the initial removal in October 1998 and prior to the termination hearing, the juvenile court held several adjudicatory and dispositional hearings. Each time the court ordered that the family be offered family centered services, including individual counseling, family therapy, and skill development. Linda was ordered to receive individual mental health counseling which she had requested.

The original order in October 1998, in response to the petition asserting that Craig and Casey were children in need of assistance, included a provision directing that the children have no contact with their maternal grandfather. That provision was reiterated in the subsequent orders.

Throughout the period the children received counseling on sexual abuse matters, behavioral counseling, and weekly in-home individual therapy. Linda was given an opportunity to counseling with a therapist while she was in confinement.

On October 8, 1999, Linda was sentenced to serve an indeterminate term of twenty-five years for conspiracy to manufacture methamphetamine, an indeterminate term of five years for possession of precursor ingredients, an indeterminate term of ten years for unlawful receipt of a precursor, and an indeterminate term of four years on two counts of child endangerment involving Craig and Casey. The sentences were to run concurrently with the other sentences.

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Linda contends the department of human services failed to offer reasonable services or use of its best efforts to promote family unification. There is a requirement that reasonable services be offered to preserve the family unit. The court is required to find reasonable efforts have been made to eliminate the need for removal before a removal is ordered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa 1994). The core of the reasonable efforts mandate is that the child welfare agency must make reasonable efforts to prevent placement or to reunify families in each case. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). This is both a required element of each state's Title IV-E state plan and a condition of federal funding for individual foster care placements. 42 U.S.C.A. §§ 671(a)(15), 672(a)(2); *H.L.B.R.*, 567 N.W.2d at 679. The nature of the reasonable efforts obligation is based on the circumstances of each case. *In re C.B.*, 611 N.W.2d 489, 593 (Iowa 2000). The services required for an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). Some or all of the following factors, among others, may be considered: the age of the children; the bonding the children have or do not have with their parent, including any existing clinical or other recommendations concerning visitation; the nature of parenting deficiencies; the physical location of the child and the parent; the limitations of the place of confinement; the services available in the prison setting; the nature of the offense; and the length of the parent's sentence. *Id.*

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The trial court made a finding that extensive services were made available to the children and to the parents to attempt to correct the situation that led to the removal and described the services that were provided. Contrary to Linda's contention that the department of human services failed to offer services, we concur with the trial court that substantial services were made available to the family. The services included individual counseling, family centered counseling including parent assessment, family therapy and skill development services, sexual abuse counseling, supervised visitations, home studies and referrals to the Iowa Department of Corrections. The extent of services provided to Linda were somewhat affected by the fact that she has been incarcerated on very serious charges which will require her confinement for a period substantially beyond the time when the children will reach the age of majority. It is noteworthy that Linda's convictions include a number of child endangerment charges involving these children or their siblings. The contention that reasonable services were not offered by the department of human services is without merit.

Linda does not challenge the determination that there is clear and convincing evidence that the parent-child relationship should be terminated. The thrust of the challenge is that the best interests of the children require the children to be placed in long-term foster care with a relative rather than termination of the parental relationship. Under the Iowa termination-of-parental-rights statutes, the court is first instructed, by section 232.116(1), to determine whether the parent has forfeited his or her protected interest. Only after making that affirmative finding on the first inquiry does the court make subsequent

decisions based solely upon its determination of the child's best interest. See Iowa Code § 232.116(2), (3). That is, once the court concludes that all of the criteria for termination of parental rights have been satisfied, the court must still make a determination whether termination would be in the child's best interest. *In re T.R.*, 483 N.W.2d 334, 337 (Iowa Ct. App. 1992). The trial court, after specifying the basis for the conclusion, decided that the criteria for terminating the parent-child relationship had been established under Iowa Code sections 232.116(1)(c), (d), (e), (h), (i), and (m) by clear and convincing evidence. The record belies the contention that reasonable services had not been provided. Extensive services were provided to the boys throughout the period from the time of the initial removal from the home to the date of termination. Services commensurate with the condition of penal confinement were offered to Linda. While the State has an obligation to make the efforts, the parents have the responsibility to demand services prior to termination proceedings. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa Ct. App. 1993). The record is devoid of any complaint by Linda concerning the extent of services being provided to her prior to the termination proceedings. This court is satisfied that reasonable services were offered and provided to the family to attempt to unify the family and preserve the family unit.

Linda complains that the department of human services did not consider her request that the children be placed in the home of her sister, Tammy. The record reflects that Tammy is not willing to honor the prior no-contact orders that were entered by the court that the children have no contact with the maternal

grandfather based on his prior sexual abuse convictions with the children. She is not willing to accept a conclusion that he has committed sexual abuse. It is not in the best interests of the children that they be placed in foster care with her.

Linda also suggests other family members or friends who might take the children in foster care. The record does not support a conclusion that they are willing or capable to provide such long-term care.

The children have been in the present foster home for over two years. They have bonded with the foster parents, and the social workers recommend that they remain in the foster home. They are adoptable. The likelihood that Linda will be available to provide active parenting to these children during any part of their minority is extremely remote because of her extended incarceration. The trial court is correct in determining that the best interests of the children require termination of the parental rights of Linda and the respective biological fathers. The primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re C.L.H.*, 500 N.W.2d 449, 452 (Iowa Ct. App. 1993).

It is time for some permanency and stability in the lives of these children. The decision of the trial court is affirmed.

AFFIRMED.