

IN THE COURT OF APPEALS OF IOWA

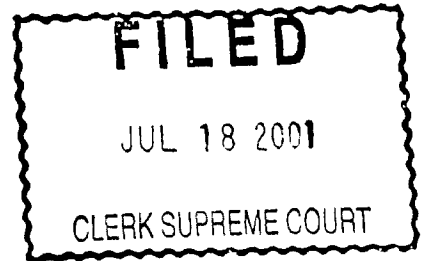
No. 1-320 / 00-0901

Filed July 18, 2001

IN THE INTEREST OF,
J.M.,

Minor Child,

C.M., Mother,
Appellant.



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

The mother appeals the termination of her parental rights and from an
order denying her petition to vacate the termination order. **AFFIRMED.**

Marla Suddreth of Borseth, Genest & Suddreth Law Office, Altoona, for
appellant.

Thomas J. Miller, Attorney General, M. Elsie Pippin, Assistant Attorney
General, and Cory McClure, Assistant County Attorney, for appellee-State.

Nicole Garbis-Nolan of the Youth Law Center, for minor child.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

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VOGEL, P.J.

A mother appeals the decision of the juvenile court which terminated her parental rights. She claims the court mistakenly found she consented to the termination. She also claims the court should have granted her petition to vacate the termination order. We affirm on appeal.

Cynthia is the mother of Joshua, born in January 1999. Cynthia was sixteen years old when Joshua was born. She had previously been adjudicated to be a child in need of assistance and had lived in a variety of foster placements. Services were offered to Cynthia to assist her in caring for Joshua.

In August 1999, Cynthia left Joshua with a friend and ran away from her placement. Joshua was placed in foster care. Cynthia was placed in a juvenile group home. At the group home, she had a counselor available to her at all times. Joshua was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) on October 5, 1999.¹

Cynthia told social workers she wanted to terminate her parental rights to Joshua. She stated she wanted him to have a better life than she did growing up. At a CINA review hearing for Joshua in February 2000, Cynthia testified she would consent to termination of her parental rights. She stated she felt

¹ Section 232.2(6)(c)(2) defines a "child in need of assistance" as a child:
 c. Who has suffered or is imminently likely to suffer harmful effect as a result of either of the following:

* * *

(2) The failure of the child's parent, guardian, custodian or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

termination was in Joshua's best interests. She stated she had not been coerced or forced to give her consent. The juvenile court found Cynthia voluntarily and intelligently consented to termination of her parental rights. The court ordered the State to file a petition to terminate parental rights.

In April 2000, the State filed a petition to terminate Cynthia's parental rights to Joshua. At the termination hearing, Cynthia testified by telephone and reaffirmed her consent to termination of her parental rights. The juvenile court entered an order on April 21, 2000, terminating Cynthia's parental rights under section 232.116(1)(a).² The court again found her consent was knowing, voluntary, and intelligent. Cynthia appeals.

In August 2000, Cynthia filed a petition pursuant to Iowa Rules of Civil Procedure 252 and 253, seeking to vacate the termination order on the ground of irregularity in the proceedings. She claimed her consent was the result of undue pressure and duress. She testified a social worker had promised an early release from the group home to an independent living situation if she agreed to termination of her parental rights. The social worker denied making any such promises. The juvenile court denied the petition, finding Cynthia's consent was voluntarily and intelligently made when it was given. The court determined there were no irregularities in the proceedings. Cynthia appeals this decision as well. The two appeals were consolidated by an order of the supreme court.

² Section 232.116(1)(a) provides for termination of parental rights where:
The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. SUFFICIENCY OF THE EVIDENCE

Cynthia contends there is insufficient evidence in the record to show she voluntarily and intelligently consented to termination of her parental rights. She points out that she did not sign a written release. She asserts she should have been provided with the safeguards provided in section 600A.4, including counseling and the ability to revoke consent.

Section 232.116(1)(a) provides for termination of parental rights where, "the parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination."

Our court has previously determined section 232.116(1)(a) does not require a release of custody to comply with all of the provisions of chapter 600A. *In re T.N.M.*, 542 N.W.2d 574, 577 (Iowa Ct. App. 1995). The termination of parental rights under chapters 232 and 600A are separate and distinct causes of action. *Id.* at 576. There are no specific requirements for a release under section 232.116(1)(a), other than consent be intelligent and voluntary. *Id.* We

consider whether the release meets fair play, disclosure, and due process requirements. *Id.*

We determine Cynthia's consent in this case does meet fair play, disclosure, and due process requirements. Cynthia voluntarily gave her consent to termination at a CINA review hearing in February 2000, and reaffirmed her intention to consent at the termination hearing in April 2000. At the CINA review hearing she was questioned extensively concerning her understanding of the rights she was giving up and the termination process. She testified termination was in Joshua's best interests, and she wanted him to grow up to be a healthy and safe child. Cynthia was represented by an attorney throughout the proceedings and had access to counseling at the group home. We find there is clear and convincing evidence in the record to show Cynthia's consent to the termination of her parental rights was intelligent and voluntary. Cynthia's parental rights were properly terminated under section 232.116(1)(a).

III. PETITION TO VACATE

Cynthia contends the juvenile court should have granted her motion to vacate because of irregularities in the proceedings. She points out that she was a minor at the time she gave her consent. She also points out that for the termination hearing she appeared only by telephone and her attorney was not with her, but was at the courthouse. She states she was pressured into giving her consent by a social worker with the promise of an early release from the group home. She asserts she did not receive sufficient counseling prior to making a decision to consent to termination of her parental rights.

Rule 252(b) allows a court to modify or vacate a final judgment on the ground of irregularity or fraud practiced upon the court. *In re Marriage of Kinnard*, 512 N.W.2d 821, 823 (Iowa Ct. App. 1993). A court has considerable discretion in deciding whether to afford relief when a vacation of judgment is sought. *In re Marriage of Bauder*, 316 N.W.2d 697, 700 (Iowa Ct. App. 1981).

In discussing what constitutes an irregular judgment under rule 252(b), our supreme court has stated:

First, we think the rule covers the cases where a party suffers an adverse ruling because of some action or inaction on the part of the court or court personnel.

* * *

Second, the action or inaction must be contrary to some prescribed rule, mode of procedure, or court practice involving the conduct of a lawsuit.

Costello v. McFadden, 553 N.W.2d 607, 612 (Iowa 1996) (citation omitted).

Here, Cynthia has not alleged the juvenile court failed to follow prescribed rules, procedures, or practice during the terminating hearing. Furthermore, we find the evidence does not support Cynthia's petition to vacate. The juvenile court found Cynthia was not credible in her testimony regarding pressure from her social worker to consent to termination of her parental rights. Cynthia was represented by an attorney throughout the proceedings and had a counselor available to her at the group home. Cynthia admitted her father was very angry with her over her decision to terminate her parental rights. She also admitted she was trying to vacate the termination order because some relatives had expressed interest in obtaining custody of Joshua. For all of these reasons, we

conclude the juvenile court did not abuse its discretion in denying the petition to vacate.

We affirm the decision of the juvenile court in both appeals.

AFFIRMED.