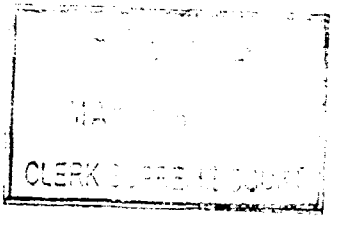
IN THE COURT OF APPEALS OF IOWA

No. 9-221 / 98-1533
Filed May 26, 1999



IN THE INTEREST OF B.L.D. and J.D.,
Minor Children

C.M., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Associate Juvenile Judge.

Mother appeals the termination of her parental rights with respect to two of her children. **AFFIRMED.**

Scott A. Sobel of the Sobel Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Jaki Livingston, Assistant County Attorney, for appellee-State.

David Backstrom Des Moines, guardian ad litem for minor children.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Christina appeals the termination of her parental rights with respect to two of her children. Christina contends there is not clear and convincing evidence supporting the termination of her parental rights; the State failed to make reasonable efforts to reunify the family; and the district court erred in admitting Phyllis Johnson's testimony. We affirm.

Christina, born May 2, 1978, is the mother of three children: Bobbie Lynn, born October 28, 1994; James, born December 20, 1995; and Zachary, born January 23, 1998. Zachary is not involved in this appeal.

On June 28, 1996, Bobbie Lynn and James were adjudicated children in need of assistance under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The adjudication was based on an incident of physical abuse of James by Gary, the natural father of these children. On May 16, 1996, Christina left the children with Gary so she could obtain a social security card for James. She was aware Gary had previously slapped James and Gary had asked her not to leave the children alone with him. James apparently cried after Christina left and would not stop. Gary eventually slapped James, then four months old, in the face leaving a red mark consistent with a hand print. At this time, it was discovered James had not been immunized and Christina had missed several appointments with James' pediatrician. Following this incident, a no contact order was entered, which both Christina and Gary violated.

Several more incidents of abuse were reported. One founded report involved a denial of critical care and failure to provide proper supervision based on Christina leaving James, then seven months old, alone in the apartment while she used a neighbor's telephone. The other founded report involved an illegal exposure of James to drugs after Christina and James received positive drug screen results on drug screens provided on July 11, 1996.[1] Christina consented to removal of her children on July 22, 1996.

Christina has been offered a number of services since January 1996. Family preservation was offered on more than one occasion to prevent removal of the children from the home. Christina followed through on her parenting evaluation but has not followed through with the recommendations; Christina did not attend all of the parenting skills classes. She has refused to pursue individual therapy because, she testified, "I don't need it, I don't think." Christina completed an intake session with the House of Mercy in May 1997 but indicated she was not interested in the program.

Christina completed a psychosocial evaluation and one substance abuse evaluation but did not follow through on a request that she complete a second substance abuse evaluation. Christina is supposed to drop UA's twice weekly but has not done so consistently. She dropped only one UA between April 19 and May 27, 1997, which tested positive for amphetamine and methamphetamine. Christina tries

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[1] James had been exposed to cocaine; Christina tested positive for cocaine and THC. Bobbie Lynn's results were negative; however, it was later determined she had spent the previous evening with her grandmother.

to shift the blame of the children's exposure to substance abuse to their father, although she is equally to blame. She has continued to insist the babysitter, not she, had exposed James to drugs prior to the July 1996 drug screens. Finally, she blames her failure to drop UA's on DHS because they failed to send her the proper paperwork; she also blames her failure to drop on lack of transportation, although DHS had provided her with bus tokens.

Christina was offered weekly visits with Bobbie Lynn and James; however, she did not visit regularly. Christina's living arrangements have been unstable. She has had three or four addresses since the children were removed. She has continued to allow people and extended family to live with her to help pay the rent and has been inconsistent about informing DHS about address changes. Christina has lived in an apartment with the electricity turned off. Christina lived in a home in which the kitchen floor, consisting of wall paneling, had been torn up, the ceiling was falling in, there was water dripping from the ceiling, and the children's paternal uncle broke his leg falling through a hole in the porch. At the time of the termination hearing, Christina was living in a small one-bedroom apartment which she admitted was too small for her and her three children but suggested they could all move in with her aunt if the children were returned.

The termination petition was filed February 25, 1998. The hearing, consolidated with a CINA adjudicatory hearing involving Zachary, was held April 30, 1998. Christina testified at the termination hearing, in part, as follows:

Q. [by prosecutor] Do you think you are an appropriate parent for these two children? A. No.

Q. You don't think you are an appropriate parent? A. No.

Q. What are your problems of parenting those children? A. Basically I guess I don't know how to nurture, I don't know how to love them.

Q. I'm asking you what you think about your relationship with Bobbie and James. A. Well, I feel that I can't be a parent to them because I haven't had much time.

Q. If you had the time do you think you could be an appropriate parent to these children. A. Inappropriate or appropriate?

Q. Appropriate, a good mom. A. Yes.

Testimony was also received from Phyllis Johnson, James and Bobbie Lynn's foster care worker. Johnson testified about her concerns about Christina's ability to parent her children and her failure to follow through on DHS expectations of her. In a report entered into evidence, Johnson stated, "It is a concern when a parent chooses to buy toys for her cats rather than diapers for her children."

Johnson's testimony and child psychiatrist Dr. Patty Al-Adsani's evaluation of Bobbie Lynn show the children have not bonded with Christina, are attached to the foster parents, and are doing well in the foster care placement they have been in since July 29, 1996.

Christina's parental rights were terminated under Iowa Code sections 232.116(1)(c) and 232.116(1)(g). Christina appeals.

I. STANDARD OF REVIEW. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re*

M.M.S., 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1997).

II. CLEAR AND CONVINCING EVIDENCE PARENTAL RIGHTS SHOULD BE TERMINATED. Christina contends the State did not prove by clear and convincing evidence her parental rights should be terminated. We disagree.

We could affirm on the basis of Christina's failure to appeal the termination of her parental rights under Iowa Code section 232.116(1)(g). *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996) (we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm the district court's ruling). However, we will decide this issue on the merits.

A. Grounds for Termination Under Iowa Code Section 232.116(1)(c). It is undisputed the first element of this section is satisfied. Section 232.116(1)(c)(2) requires a finding that "subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of such services."

Christina's lack of parenting skills is the primary circumstance which led to the adjudication and the children's removal shortly thereafter. She was offered or

received numerous services to correct her parenting deficiencies. However, after two years of services, Christina continued to be unable to nurture and parent her children. She admitted as much at the hearing.

Additionally, Christina has often neglected to provide diapers and bibs, and forgets to buy milk for the children or bring their favorite toys and snacks to visits. She did not consistently attend visits. In early 1998, Christina still could not verbalize anything else a child might need to grow up healthy and happy besides food and clothing. At the hearing, she belittled Bobbie Lynn's pica diagnosis,[2] stating all children put things in their mouths. She failed to obtain appropriate housing; her apartments have been unsafe, too small, and/or she has various people living with her to help pay the rent.

Christina continues to blame others instead of taking responsibility for her actions: the children's exposure to substance abuse and drugs is the fault of Gary and the babysitter; her failure to regain custody of her children is Johnson's fault for not being helpful; if she misses meetings, classes, or UA drops, it is because her mom did not have time to take her, the Young Women's Resource Center did not pick her up, or someone took her bus tokens. We note Christina never called the Center nor did she request additional bus tokens, even though they would have been given to her and she knew who she had to ask for them.

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[2] Pica is eating unusual objects. Dr. Al-Adsani's report indicates this "is most frequently associated with an extremely neglectful environment."

We conclude there is clear and convincing evidence to support a finding that despite the offer or receipt of numerous services over a two-year period, the circumstance which led to the adjudication continues to exist.

B. Grounds for Termination Under Iowa Code Section 232.116(1)(g). The first three elements of this code section are satisfied. Within the meaning of section 232.116(1)(g)(4), a child cannot be returned to the custody of the child's parents if any one of the grounds listed in section 232.2(6) are proven by clear and convincing evidence. *See In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988) (interpreting Iowa Code section 232.116(1)(e)(4)); *In re M.Z.*, 481 N.W.2d 532, 535 (Iowa App. 1991).

For reasons previously discussed, we find Christina continues to be unable to nurture and parent Bobbie Lynn and James. As the juvenile court summarized:

> Christina . . . continues to be unable to meet the children's needs. She has participated in supervised visitation, but has been unable to demonstrate an ability to meet the children's needs so that visits could move to unsupervised. She has never followed through with the recommendation for individual therapy. As Dr. Al-Adsani stated, Christina is too in need of her own nurturing and parenting and too unable to recognize the children's needs to be able to meet them.

Therefore, we conclude there is clear and convincing evidence Bobbie Lynn and James cannot be returned to Christina at this time because they cannot be protected from neglect or the imminent likelihood of neglect.

In summary, Bobbie Lynn and James have been in foster care for two years and are doing well in that placement. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant,

responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). The evidence is clear and convincing that Christina continues to be unable to provide such parenting. Her parental rights were properly terminated under Iowa Code sections 232.116(1)(c) and 232.116(1)(g).

III. REASONABLE EFFORTS TO REUNITE THE FAMILY. Christina contends the State failed to make reasonable efforts to reunify the family. We disagree.

Christina concedes that services were offered. She claims, however, these services were not fully received. The State must make reasonable efforts to reunite parents and children prior to termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). As detailed above, Christina received numerous services including: in-home services, parenting classes, psychosocial and substance abuse evaluations, family preservation services, individual therapy, and an intake at the House of Mercy. Christina chose not to avail herself of all of the services and did not regularly attend visitations with Bobbie Lynn and James. We conclude Christina was provided more than adequate services for reunification before termination of her parental rights despite her claim she should have been allowed unsupervised visits. *See In re T.T.*, 541 N.W.2d 552, 556-557 (Iowa App. 1995) (adequate services where parents received some services, voluntarily terminated family therapy, and chose not to utilize other offered services); *T.C.*, 522 N.W.2d at 108-109 (adequate services where parents failed to attend numerous meetings and scheduled visits, failed to

contact DHS to schedule training, and parents were unable to gain the necessary skills to care for child).

IV. ADMISSION OF PHYLLIS JOHNSON'S TESTIMONY. Christina contends the district court erred in admitting Phyllis Johnson's testimony. We disagree.

This state adheres to a liberal policy concerning the admissibility of opinion testimony. The admissibility of opinion testimony, lay or expert, rests in the sound discretion of the trial court. *State ex rel. Leas*, 303 N.W.2d 414, 420 (Iowa 1981); *In re C.W.*, 342 N.W.2d 885, 887 (Iowa App. 1983). The trial court's determination will not be disturbed on appeal unless manifest abuse of that discretion causing prejudice to the complaining party is shown. *Leas*, 303 N.W.2d at 420.

Christina objected to the admission of the following portion of Johnson's testimony:

> Q. [by the Prosecutor] Based upon your experience working with Christina, is that type of [in-home] services essentially to ensure continued placement of Zachary in her home? A. That type of service is essential if we are to take Doctor Ad-Adsani's report and realize that some of the concerns behaviorally that we are seeing in Bobbie Lynn are attachment issues. That tells us that we have to help her or Christina has to have a closer attachment to Zachary than she has in these two children or we are going to have a repeat of the same situation.

Christina stipulated to consolidating the termination and CINA petition hearings. The testimony she objects to is relevant to the proceeding regarding Zachary, and we presume the court separated the evidence regarding Zachary from the evidence in the termination proceeding. *In re L.K.S.*, 451 N.W.2d 819, 822 (Iowa

1990). Even if the court did not properly separate the evidence, Christina is unable to show she was prejudiced because there is clear and convincing evidence to support termination of her parental rights in the absence of this testimony. We conclude it was not an abuse of discretion to admit this testimony.

For these reasons, we affirm.

AFFIRMED.

No. 98-1533. [9-221] IN RE B.L.D.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Associate Juvenile Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Mahan, JJ. Opinion by Mahan, J. (11 pages $4.40)

Christina appeals the termination of her parental rights with respect to two of her children. Bobbie Lynn and James were adjudicated children in need of assistance based on an incident of physical abuse of James by Gary, the natural father of these children. Gary slapped James, then four months old, in the face leaving a red mark consistent with a hand print. This incident occurred when Christina left the children with Gary so she could obtain a social security card for James even though she was aware Gary had previously slapped James and Gary had asked her not to leave the children alone with him. Following this incident, a no contact order was entered, which Christina and Gary violated. Within a month, several more incidents of abuse were reported concerning Christina leaving a then-seven-month-old James alone in the apartment while she used a neighbor's telephone and illegally exposing James to drugs. Shortly thereafter, Christina consented to the removal of her children. **OPINION HOLDS: I. *Termination of Parental Rights under Iowa Code Sections 232.116(1)(c) and (g).*** Christina's lack of parenting skills is the primary circumstance which led to the adjudication and the children's removal shortly thereafter. She was offered or received numerous services to correct her parenting deficiencies. However, after two years of services, Christina continued to be unable to nurture and parent her children. She admitted as much at the hearing. Furthermore, the evidence shows Christina often neglected to provide the children with items such as diapers and milk, did not consistently attend visits, belittled Bobbie Lynn's pica diagnosis, failed to obtain appropriate housing, and continues to blame others instead of taking responsibility for her actions. For these reasons, we conclude there is clear and convincing evidence to support findings that (1) despite the offer or receipt of numerous services over a two year period, the circumstance that led to the adjudication continues to exist, and (2) Bobbie Lynn and James cannot be returned to Christina at this time because they cannot be protected from neglect or the imminent likelihood of neglect. Her parental rights were properly terminated under these code sections. **II. *Reasonable Efforts to Reunify the Family.*** Christina concedes services were offered but claims they were not fully received. Christina received numerous services including: in-home services, parenting classes, psychosocial and substance abuse evaluations, family preservation services, individual therapy, and an intake at the House of Mercy. Christina chose not to avail herself of all of the services and did not regularly attend visitations with Bobbie Lynn and James. We conclude Christina was provided more than adequate services for reunification before termination of her parental rights. **III. *Admission of Phyllis Johnson's Testimony.*** Christina stipulated to consolidation of the termination hearing with a CINA petition hearing regarding a third child of hers, Zachary. Johnson was the children's foster care worker and Christina objected to the admission of a portion of her testimony. This portion of Johnson's testimony is relevant to the proceeding regarding

Zachary, and we presume the court separated the evidence regarding Zachary from the evidence in the termination proceeding. Furthermore, Christina is unable to show she was prejudiced because there is clear and convincing evidence to support termination of her parental rights in the absence of this testimony. We conclude it was not an abuse of discretion to admit this testimony.