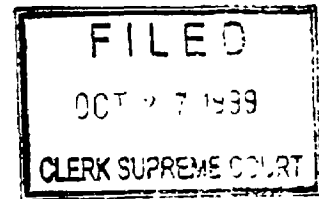


IN THE COURT OF APPEALS OF IOWA

No. 1999-305 (9-535) / 99-421
Filed October 27, 1999



IN THE INTEREST OF I.L., Minor Child,

**C.L., Mother,
Appellant.**

Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko,
Associate Juvenile Judge.

A mother appeals the juvenile court order terminating her parental rights to one
of two minor children. **AFFIRMED.**

John M. Murray of Murray & Murray, P.L.C., Storm Lake, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Rick Kimble, Assistant County Attorney, for appellee State.

James A. Schall, Storm Lake, guardian ad litem for minor child.

Considered by Zimmer, P.J., Miller, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

SCHLEGEL, S.J.

A mother appeals the juvenile court order terminating her parental rights to one of her two minor children. She claims the State failed to prove she did not maintain significant and meaningful contact with her child or that he could not be safely returned to her care. She also claims termination is not in his best interest because it would separate him from his sister and destroy the close bond between them. The father's parental rights also were terminated but are not at issue in this appeal.

Background. Carolyn is the mother of two minor children, Isaac, born in October 1990, and Felicia, born in December 1992. DHS began providing services to Carolyn in 1990. In April 1995 the children were removed voluntarily from the home and placed in emergency foster care after the electricity to the home was turned off because the bills were not paid. Both children were adjudicated in need of assistance in July 1995 under Iowa Code section 232.2(6)(f) following seven founded reports of denial of critical care and failure to provide proper supervision and one founded physical abuse report. The children were returned to Carolyn's care after the electricity was turned on. DHS provided family centered in-home services, family protective services, protective day care, and individual therapy for Isaac and Carolyn. In October 1995 Carolyn voluntarily placed Isaac in foster care because of his behavioral problems and her fear he would harm Felicia. Isaac has severe behavioral problems and has been shuttled between foster homes, hospitals, and a residential treatment facility where he lived for about eleven months. Medications have helped

reduce the severity of Isaac's behavior problems, but he requires strong, consistent parenting assisted by service providers.

Despite DHS's offer of numerous services to Carolyn, she failed to comprehend the seriousness of Isaac's needs, and his behavior deteriorated after each visitation. After December 1997 Carolyn had little contact with Isaac. Isaac was released from residential treatment in February 1998. His behavior improved while in foster care. In June 1998 the State filed a petition to terminate Carolyn's parental rights. Following trial, the juvenile court terminated Carolyn's parental rights under Iowa Code sections 232.116(1)(d) and (e).¹ The court expressed great concern about how the juvenile court system had failed Isaac.

The System has forced him to be moved from at least two foster home who were willing to maintain and stay with Isaac through the long haul, if only they knew they could have some permanency and commitment on the part of the Department of Human Services to them. Unfortunately, neither foster parent was able to receive that. Instead,

¹ Section 232.116(1)(d)(3) requires:

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Section 232.116(1)(e)(4) requires:

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

the Department of Human Services moved headlong into reunification when all of the professionals who were working with this child cried out against reunification.

* * *

The level of Isaac's behaviors is such that he needs a very structured, consistent environment with a lot of services. Anybody who parents Isaac must accept and embrace services. . . . "He cannot take much more."

That appears to be the theme of all service providers and professionals who are working with Isaac. -- that he cannot take much more. This Court needs to finally listen to the service providers and those people who work with Isaac. . . . Service providers have been calling for help -- urging help for this child. The Court has essentially ignored them.

The court also terminated the father's parental rights. Carolyn has appealed.

Scope of review. We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7). Our primary concern in a termination proceeding is the best interests of the child. *Id.* Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995).

Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Appellate claims. Carolyn first claims the evidence does not support a finding she did not maintain a significant and meaningful relationship with Isaac or make reasonable efforts to resume his care. *See* Iowa Code § 232.116(1)(d)(3). She argues visitation was restricted by DHS and the case worker either failed to respond to requests for visits or otherwise frustrated her attempts to see Isaac. She asserts most of the evidence came from individuals who had been involved in the case only a short time and there was little evidence revealing all the efforts she made to resume Isaac's care earlier in the case. She points to the evidence of her adequate parenting of Felicia as proof she could make the same progress with Isaac.

Second, Carolyn claims there was not clear and convincing evidence Isaac could not be returned to her "under the normal course of proceedings in matters pertaining to children in need of assistance." *See* Iowa Code § 232.102.² She again

² Section 232.102 provides, in relevant part:

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent,

guardian or custodian in order to enable them to resume custody of the child.

* * *

8. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services.

* * *

9. a. As used in this section, "reasonable efforts" means the efforts made to prevent or eliminate the need for removal of a child from the child's home. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If intensive family preservation services were not provided, the court record shall enumerate the reasons the services were not provided, including but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section:

(1) "Family-centered services" means services which utilize a comprehensive approach to addressing the problems of individual family members, whether or not the problems are integrally related to the family, within the context of the family. Family-centered services are adapted to the individual needs of a family in the intensity and duration of service delivery and are intended to improve overall family functioning.

(2) "Intensive family preservation services" means services provided

points to her progress with Felicia as evidence of improvement in her parenting skills. She does not argue Isaac could be returned to her care at the time of the termination, but rather that reunification is the goal of section 232.102 and "this goal should be exhausted before the focus shifts to a severance of family ties." She argues the juvenile court did not properly administer reunification as a goal.

Finally, Carolyn claims termination violates the best interests of Isaac and Felicia because it is detrimental to the close family bond between the children and her. Most of her argument is based on examining five factors relating to the familial bond set forth in an unpublished case, *In re M.R.S. II*, No. 8-315/98-0095 (Iowa App. Aug. 28, 1998).

Analysis. Many of Carolyn's actions belie her argument DHS prevented her from maintaining a close relationship with Isaac and interfered with visitation. Knowing structure was important to a successful visit, she refused to stop allowing up to ten people to stay in her home. She refused transportation to the residential facility where Isaac was because she would not accept unless she could smoke in the car. Carolyn refused the offer of a protective payee to assist her in meeting her

to a family with a child who is at imminent risk of out-of-home placement. The services are designed to address any problem creating the need for out-of-home placement and have the following characteristics: are persistently offered but provided at the family's option; are provided in the family's home; are available twenty-four hours per day; provide a response within twenty-four hours of the initial contact for assistance; have worker caseloads of not more than two through four families per worker at any one time; are provided for a period of four to six weeks; and provide funding in order to meet the special needs of a family.

routine financial obligations such as rent and utilities, placing her children at risk of being homeless or without heat and light. She made so little progress in her skill development after thirty-three months of services, that no further funding was authorized. Carolyn has not provided financial support for Isaac. The evidence supports a finding the elements of section 232.116(1)(d) have been proven by clear and convincing evidence.

Carolyn's second claim is that Isaac could be returned to her "under the normal course of proceedings in matters pertaining to children in need of assistance," citing Iowa Code section 232.102. She admits Isaac could not be returned to her care at the time of the termination hearing. By that time, he had been out of her custody and care for nearly three years. Although she can point to some minimal progress in her parenting skills and her ability to care for Felicia, Isaac requires far more than adequate parenting skills. His behavior problems require him to have a very regular, structured environment, to receive his medication as prescribed, and to have easy access to service providers. Carolyn refuses to modify her lifestyle to provide a structured environment. She has not given him his medication as prescribed. She has resisted the intervention of service providers in the past, but now claims she would work with providers. Too much time already has passed for Isaac. Clear and convincing evidence supports termination under section 232.116(1)(e).

Carolyn's claims based on section 232.116(3)³ are without merit. Although there is some bond between Isaac and Felicia, they had already been separated from each other for nearly three years by the time of the termination order. Carolyn's lengthy discussion of factors to consider is based on an unpublished case, which may not be cited as authority. Iowa R. App. P. 14(e). The decision not to terminate parental rights under section 232.116(3) is discretionary. *In re J.V.*, 464 N.W.2d 887, 890 (Iowa App. 1990). The evidence does not support a discretionary choice not to terminate.

AFFIRMED.

³ 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

* * *

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.