**IN THE COURT OF APPEALS OF IOWA**

No. 2-323 / 91-1941

FILED
AUG 27 1992
CLERK SUPREME COURT

**IN THE INTEREST OF C.C.**, A Minor Child,

**C.G.**, Mother,

Appellant.

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Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Juvenile Referree.

The mother of a minor child appeals the termination of her parental rights. **AFFIRMED.**

Michael J. Burdette of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; and Ray Blase, Assistant County Attorney, for appellee State.

Michelle Chenoweth, Des Moines, guardian ad litem for the child.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

**HABHAB, J.**

**FACTS**

Cory Clark[1] was born on August 30, 1990 to C.G., his mother, and T.C., his father. T.C. and C.G. lived together but never married. Cory lived with his parents until these proceedings were initiated.

On November 27, 1990, Cory was diagnosed at Blank Memorial Hospital as having sub acute rib fractures involving the left 7th and 8th ribs. The treating pediatricians opined these rib fractures resulted from profound squeezing and shaking of the infant. Consequently, on November 29, 1990, the State filed a petition alleging Cory to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2) and 232.2(6)(d). The petition stated the following: T.C. admitted squeezing Cory in anger on nine or ten occasions, beginning in October 1990; T.C. had a history of sexually abusing children; T.C. was in need of intensive counseling and treatment regarding his abusive tendencies; and C.G. was an inexperienced parent and in need of parenting assistance and counseling. Cory was removed from the custody of his parents and placed with DHS

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1. This is not the child's real name; his initials are C.C.

for purposes of emergency foster care.[2] The juvenile court then issued a no-contact order between T.C. and Cory.

On December 10, 1990, an emergency removal review hearing was held and the parents agreed to the continued removal of the child. Cory was placed in the temporary legal custody of the maternal aunt, under the supervision of the Department of Human Services (DHS).

On January 8, 1991, Cory was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(d).[3] On February 5, 1991, after a dispositional hearing, the juvenile court confirmed the CINA adjudication and Cory's placement.[4] The juvenile court ordered T.C. to have no contact with Cory. On August 6, 1991, a review hearing was held and the juvenile court confirmed the CINA adjudication.

On June 6, 1991, in a separate criminal proceeding, the district court found T.C. guilty of child endangerment not resulting in serious injury pursuant to Iowa Code section 726.6(3). The district court suspended T.C.'s sentence and placed him on probation.

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2. The parents agreed to the emergency removal of Cory due to the physical abuse by T.C.

3. The parents agreed to the adjudication of Cory as a CINA due to the physical abuse by T.C.

4. At the dispositional hearing, the parents stipulated to continuing Cory's placement in the maternal aunt's custody.

On August 22, 1991, the State filed a petition to terminate the parental rights of C.G. and T.C. The State alleged the mother had failed to make sufficient progress towards reunification with her son.

On September 6, 1991, a pretrial conference was held. The court filed an order indicating discovery should be completed by October 7, 1991. The court scheduled the termination hearing for October 14, 1991. On October 3, 1991, C.G. filed an application to take depositions at the State's expense. On October 4, 1991, C.G. filed an application for an independent psychological examination at the State's expense. On October 9, 1991, C.G. filed a motion for a continuance. On October 10, 1991, the juvenile court denied the motion and applications as untimely.

On October 11, 1991, C.G. filed an application for discretionary review and a request for emergency stay with the Iowa Supreme Court. On October 14, 1991, without ruling on the merits, the court denied the application and request.

On October 24, 1991, the termination hearing was held. On November 21, 1991, the juvenile court filed an order terminating the parental rights of C.G. and T.C. pursuant to Iowa Code section 232.116(1)(g). Cory, thirteen months old, had been out of his parents' custody for the last ten months. Dr. Michael Huston, C.G.'s psychologist, opined it would be at least another six to twelve months before C.G.

would be prepared to appropriately protect Cory. T.C. was incarcerated at the Fort Des Moines Correctional facility as the result of his June 6, 1991, conviction of child endangerment. Based upon these facts, the juvenile court found clear and convincing evidence Cory could not be returned to either parent at this time and, consequently, terminated the parental rights of C.G. and T.C.

The mother appeals the juvenile court decision. The father has not appealed the termination of his parental rights. The attorney for the child filed a separate brief and concurs with the termination order. We affirm.

## SCOPE OF REVIEW

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the

> parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988).

In the past, the courts have recognized that parental interest in the integrity of the family unit exists. Dameron, 306 N.W.2d at 745. However, this interest is not absolute and may be forfeited by certain parental conduct. Id. Because the State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. Id. (citations omitted).

## ANALYSIS

C.G. argues the juvenile court abused its discretion and violated her constitutional rights by denying her application for an independent psychological examination and depositions at the State's expense. C.G. further argues the juvenile court erred in terminating her parental rights and finding there was clear and convincing evidence Cory could not be returned to his mother's care at the time of the termination hearing. We will address the issues in the order presented.

I. **Discovery Applications.**

C.G. maintains the juvenile court abused its discretion and violated her constitutional rights to effective cross-examination of the State's witnesses, due process of law, and equal protection by denying her application for an independent psychological examination and depositions at the State's expense. We disagree.

On this issue, we review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

The juvenile court denied C.G.'s requests for an independent psychological evaluation[5] and for depositions at the State's expense because they were untimely made and would have necessitated a continuation of the hearing. We find the juvenile court's actions were within its discretion.

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5. C.G. had already had two psychological examinations. One was done at Iowa Lutheran Hospital, which was chosen by C.G. herself for her evaluation. A second evaluation, a parental evaluation which included psychological testing, was completed at Broadlawns Hospital as late as September 1991, and indicated her prognosis was guarded. C.G. was also in individual therapy at the time of the hearing and her therapist reported her prognosis for change was "guarded." The record is absent of any offer of proof that further evaluation of C.G. would have yielded different results.

C.G. and her counsel knew as early as August 6, 1991, the State would be filing a petition to terminate her parental rights. The State filed the petition to terminate on August 22, 1991, and a pretrial conference was held on September 6, 1991. The pretrial order listed all of the State's witnesses. C.G. could have made applications for depositions as early as September 6, 1991. However, she waited until October 4, 1991, three days before the discovery deadline set in the pretrial order, to apply for depositions of the State's witnesses. Likewise, C.G. waited until October 4, 1991, to make an application for an independent psychological evaluation. Because the hearing date was set for October 14, 1991, by pretrial order, it would have been necessary to continue the hearing in order for depositions to be taken and another evaluation to be done.

C.G.'s argument she was denied effective cross-examination as protected by the sixth amendment fails. "By its terms, the sixth amendment applies only to criminal cases." In re D.J.R., 454 N.W.2d 838, 846 (Iowa 1990) (citing In re L.K.S., 451 N.W.2d 819, 822 (Iowa 1989)). "The termination of parental rights is a civil case." In re J.S., 470 N.W.2d 48, 51-52 (Iowa App. 1991). Therefore, C.G. has no sixth amendment rights in this proceeding.

Given the notice C.G. had regarding the witnesses the State would call and the opportunity to question those witnesses prior to trial, we are unable to conclude the

juvenile court abused its discretion in overruling C.G.'s applications. In addition, there is no evidence C.G.'s counsel at any time was denied effective cross-examination of any of the witnesses nor is there any complaint that a part of the testimony of those witnesses came as such a surprise that discovery was necessary. We find C.G.'s arguments she was denied due process of law and equal protection to be without merit. We affirm the juvenile court on this issue.

II. Iowa Code Section 232.116(1)(g).

Under Iowa Code section 232.116(1)(g), the court may order the termination of parental rights if it finds all of the following have occurred:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(g) (1991).

There is no dispute the first three subsections of Iowa Code section 232.116(1)(g) have been satisfied. C.G. asserts the juvenile court erred in finding there was clear and convincing evidence Cory could not be returned to her

custody at the time of the termination hearing as provided in subsection (4). We disagree.

Despite overwhelming evidence, C.G. refused to admit T.C. caused Cory's injuries.[6] Even after T.C.'s admission to squeezing and shaking Cory and his subsequent conviction of child endangerment, C.G. refused to believe T.C. had harmed her son. It was not until August of 1991, after the State's recommendation for termination, that C.G. verbally acknowledged T.C. had injured Cory and, thereafter, separated from T.C.

The court gave the parents explicit instructions, at the dispositional hearing, they needed to move rapidly in order to avoid termination of parental rights. At the termination hearing, C.G. admitted the court advised her during the dispositional hearing her rights could be terminated in six months.

C.G. admitted the DHS worker told her in December of 1990 to separate from T.C. if she wanted Cory returned to her custody. She also admitted the juvenile court officer told her to separate from T.C. C.G. further admitted she attended a May 30, 1991, meeting at the juvenile court offices to discuss the Case Permanency Plan during which

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6. In late November 1990, T.C. admitted squeezing and shaking Cory to juvenile court officials. At the same time, he also told C.G. he had squeezed and shaken the child. Both parents stipulated to the removal of Cory Both parents stipulated to the allegations in the CINA petition, which named T.C. as Cory's abuser and included T.C.'s history of sexual abuse of a young boy.

she was told to leave T.C. if she wanted Cory. Nevertheless, C.G. continued her relationship with T.C. until she knew the State intended to pursue termination.

Although C.G. separated from T.C. in August of 1991, the service providers stated, in their recommendations for termination, they did not feel C.G. had permanently ended her relationship with T.C. C.G. had told service providers her plan is to break up with T.C., get her son back, and then reunite with T.C. Additionally, at the termination hearing, T.C. testified he still intended to reunite with C.G.

Moreover, Dr. Huston testified C.G. shows very little empathy for her son's experience of abuse and believes Cory has not been affected at all by the abuse or the disruption in the family. Dr. Huston explained that people repeat patterns in relationships unless there is intervention or the person undergoes significant change. He then testified he had not seen any internal intrinsic changes in C.G., at least not the type of change he believes C.G. has to undergo for her not to follow the pattern of having relationships with abusive men. Dr. Huston testified it was a probability, based on his knowledge of C.G.'s prior behavior and his assessment of her motivation in therapy, C.G. would involve herself in a similar relationship with another abusive man. He testified C.G. would need six to twelve more months of counseling to address her codependency problems. Dr. David Christiansen testified

T.C. would need two or three years of intensive individual counseling to address his abusive and aggressive behavior.

C.G. chose to remain with T.C. for nine months after he abused her son. C.G. sacrificed valuable time in Cory's life while she fulfilled her own needs, rather than attending to her son's needs. She refused to heed all advice about the need to act quickly to prove herself a fit parent. Cory has been in foster care since November 1990. He should not be forced to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977) (citation omitted). He deserves the opportunity for a stable, nurturing environment free from the threat of physical and sexual abuse. In re S.O., 483 N.W.2d 602, 604-05 (Iowa 1992).

> There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process. The child will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.

In re A.C., 415 N.W.2d at 613. We find the State proved the elements of Iowa Code section 232.116(1)(g) and C.G.'s parental rights should be terminated. We affirm the juvenile court on this issue.

**CONCLUSION**

We are unable to conclude the juvenile court abused its discretion by overruling C.G.'s discovery applications as untimely. We further find the requirements of Iowa Code section 232.116(1)(g) have been met and the parental rights of C.G. should be terminated. We hold it is in Cory's best interest to terminate the parental rights of his mother. After considering all issues presented, we affirm the juvenile court.

Costs of this appeal are taxed to the appellant.

**AFFIRMED.**