

IN THE COURT OF APPEALS OF IOWA

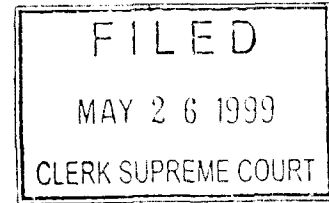
No. 1999-67 (9-222) / 98-1872

Filed May 26, 1999

IN THE INTEREST OF M.D.C., Minor Child,

D.C.B., Mother,

Appellant.



Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn,
Associate Juvenile Judge.

The mother of a minor child appeals a district court order terminating her
parental rights. **AFFIRMED.**

Kevin S. Maughan of Maughan Law Office, Albia, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Robert Bozwell, County Attorney, for appellee State.

Keith A. Kreiman, Centerville, guardian ad litem for minor child.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Dalena C. appeals a district court order terminating her parental rights. We affirm.

Background facts. Dalena is the mother of Myriah, born in February of 1996. Myriah first came to the attention of DHS in August of 1996. On August 1, 1996, Peggy Mishler was having coffee at the Centerville Hardee's when she heard a baby crying and an adult female yelling and using profanity. Mishler heard the woman threaten to run the baby's head through the glass if she didn't shut up. When Mishler saw the woman across the restaurant, she heard her say "Take these. Take these," and observed her holding french fries up to a baby's mouth. Mishler saw the baby choke on the french fries and start crying again. Mishler went over to the woman, asked her what her baby's name was and if she might pick her up. The woman, Dalena, consented, and Mishler observed that the baby, Myriah, had no clothes on and that her genitals were raw.

When Mishler returned home, she called the police and reported the incident. After interviewing Mishler, DHS immediately filed and obtained a temporary order for Myriah's removal and initiated CINA proceedings. Following a hearing, Myriah was found to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (1995). The juvenile court transferred temporary legal custody of Myriah to DHS for placement in foster care and ordered supervised visitation for Dalena. The court further ordered Dalena to undergo a psychiatric and

psychological evaluation, a substance abuse evaluation, and participate in parent-skill development instruction, parenting classes, and individual counseling.

After a review hearing in June of 1997, the court further ordered that Dalena participate in medication management services, enroll in an educational program or find employment, and maintain a stable residence. Following review hearings in September 1997, December 1997, and January 1998, the juvenile court ordered that DHS commence termination proceedings.

The State filed a petition for termination of parental rights in May of 1988. Following a hearing, the juvenile court issued an order terminating Dalena's parental rights pursuant to Iowa Code section 232.116(1)(g) (1997). Dalena now appeals.¹

Scope of review. The scope of review in termination cases is de novo. *See In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child; we look to both the child's long-range and immediate interests. *M.N.W.*, 577 N.W.2d at 875.

Clear and convincing evidence. Dalena contends that the court lacked clear and convincing evidence to terminate her parental rights.

In order to terminate parental rights under Iowa Code section 232.116(1)(g), the State must prove by clear and convincing evidence that:

- (1) The child is three years of age or younger.

¹ The parental rights of Myriah's three potential fathers were also terminated by the juvenile court's order and are not a part of this appeal.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents 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.

Dalena specifically contends that there was not clear and convincing evidence that Myriah could not be returned to her custody. Iowa Code section 232.102(5) provides that:

Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

a. The child cannot be protected from physical abuse without transfer of custody; or

b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

We find clear and convincing evidence that Myriah could not safely be returned to Dalena's care. Dalena was unable to maintain stable employment and had approximately nine different residences between June of 1997 and June of 1998. Dalena also made minimal progress despite the numerous services provided. She continues to manage anger poorly and was frequently resistant to assistance from service providers. Dalena has also failed to consistently follow through with treatment and medication for her mental health problems. She has further sought out

unhealthy, and even abusive, relationships with men without recognizing the potential danger to Myriah. Dalena lied to service providers about her continuing relationship with a man who had a founded report of physical abuse and lascivious acts on children. Dalena has consistently demonstrated that she is unable or unwilling to put Myriah's needs above her own. At some point, the rights and needs of the child rise above the rights and needs of the parents. The legislature, through section 232.116, directs us to that point. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). We conclude that it is Myriah's best interest that Dalena's parental rights be terminated. For these reasons, we affirm the order of the juvenile court.

AFFIRMED.

No. 98-1872. [1999-67 (9-222)] IN RE M.D.C.

Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Vogel and Zimmer, JJ. Opinion by Vogel, J. (5 pages \$2.00)

Dalena is the mother of Myriah, born in February of 1996. Myriah first came to the attention of DHS in August of 1996, following a private citizen's report that she had heard Dalena yell at Myriah and threaten to run her head through the window at a restaurant, and further observed Dalena giving Myriah french fries which she choked upon. After investigating the incident, DHS immediately initiated CINA proceedings. Dalena's parental rights were ultimately terminated pursuant to Iowa Code section 2332.116(1)(g)(1997). **OPINION HOLDS: *Clear and convincing evidence.*** Dalena specifically contends that there was not clear and convincing evidence that Myriah could not be returned to her custody. However, we find clear and convincing evidence that Myriah could not safely be returned to Dalena's care. Dalena was unable to maintain stable employment and had approximately nine different residences between June of

1997 and June of 1998. Dalena also made minimal progress despite the numerous services provided. She continues to manage anger poorly and was frequently resistant to assistance from service providers. Dalena has also failed to consistently follow through with treatment and medication for her mental health problems. She has further sought out unhealthy, and even abusive, relationships with men without recognizing the potential danger to Myriah. Dalena has consistently demonstrated that she is unable or unwilling to put Myriah's needs above her own. We conclude that it is Myriah's best interest that Dalena's parental rights be terminated.