

IN THE COURT OF APPEALS OF IOWA

No. 1999-223 (9-447) / 98-1562

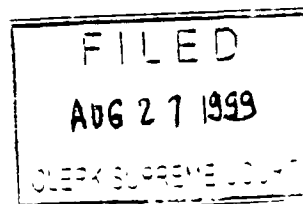
Filed August 27, 1999

IN THE INTEREST OF R.E. and S.E., Minor Children,

R.W.E., Father,
Appellant,

M.E., Mother of R.E.,
Appellant,

T.O., Mother of S.E.,
Appellant.



Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Associate Juvenile Judge.

The court terminated T.O. and R.E.'s parental rights to S.E., and terminated
M.E. and R.E.'s parental rights to R.E. **AFFIRMED.**

James Bryson Clements, Davenport, for appellant-father.

Robert S. Gallagher of Gosma & Gallagher, P.L.C., Davenport, for appellant-
M.E.

Penelope C. Souhrada, Davenport, for appellant-T.O.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant
Attorney General, Chris Odell, Assistant Attorney General, and Gerda Lane, Assistant
County Attorney, for appellee-State.

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Kyle D. Williamson of Engelman, Carroll & Williamson, Davenport, guardian
ad litem for minor children.

Considered by Vogel, P.J., and Zimmer and Habhab,* JJ.

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

HABHAB, S.J.

Robert and Tina are the parents of Samantha, who was born in November 1992. Robert and Michelle are the parents of Rob, who was born in March 1997. Robert, Tina and Michelle appeal the decisions of the juvenile court which terminated their parental rights. The parents claim there is insufficient evidence to show the children could not be returned to their care. In addition, Tina asserts she was denied equal protection under the law.

Robert has a history of violent outbursts. Robert and Tina became involved with the Department of Human Services (DHS) in March 1993 when it issued a founded report of physical abuse against Robert after he struck Samantha in the face, leaving a large bruise. Samantha was placed in foster care for a period of time, then returned home with intensive in-home services. There were concerns Samantha was failing to thrive. The parents lacked appropriate parenting skills. The family received services for about two years before the case was closed.

DHS became involved with Samantha again in October 1997. At that time Tina and Samantha were living in a household which included an adolescent sex offender. The home was filthy and unsanitary. Samantha appeared malnourished and had an untreated infection on her thumb. DHS issued a founded report of denial of critical care against Tina. Samantha was removed from the home and placed in foster care. She was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2), (e), and (g).

Tina and Robert had separate visitation with Samantha. Robert did not interact with Samantha and she appeared afraid of him. In February 1998 his visitation was suspended. Due to threats from Robert, a no-contact order was issued. Robert attended a substance abuse program for alcohol and a batterer's education program. He attended one individual counseling session.

Because of her lack of cognitive ability, Tina was unable to remember the services she had received in the past. She received services to help her learn housekeeping skills. She participated in weekly parenting sessions. Tina continued with visitation until March 1998, when she voluntarily suspended visits. Tina was not always able to understand Samantha's needs. Samantha exhibited fear of being left alone with Tina. Social workers advised a temporary suspension of visits in order to stabilize Samantha's behavior and to allow her to progress in therapy. Visitation was never reinstated. Tina was cooperative with services and would make progress for a period of time. However, she would then regress to the point where services started.

Samantha is developmentally delayed. She receives play therapy and attends an early childhood special education program. She has made progress in foster care. Once visits were suspended Samantha became more manageable and her verbal skills increased.

After Robert ended his relationship with Tina, he began a relationship with Michelle. They are the parents of Rob, who was born in March 1997. The parents began to receive services before Rob was born, but had problems applying even

basic parenting skills. Michelle sought medical assistance for Rob for minor or nonexistent problems. Robert had problems controlling his temper and threatened to knock Rob's head off. The parents were only sporadically cooperative with services. DHS issued a founded report of denial of critical care.

Rob was removed from his parents' care in May 1997 and placed in foster care. He was adjudicated to be a child in need of assistance pursuant to sections 232.2(6)(b), (c)(2), and (n).

Michelle and Robert married in July 1997. They began to receive services from a family life specialist to help them increase their parenting skills, but they remained unable to understand Rob's needs. The services Robert received are noted above. Michelle had inconsistent attendance at a domestic violence advocacy program. In February 1998, Michelle began individual counseling to address problems with anger management.

The parents participated in supervised visitation. They needed constant reminders on how to safely care for Rob. Robert would not play with Rob on a consistent basis, and would quickly lose interest. Michelle was able to play with Rob for a longer period of time, but did not understand what activities would be age-appropriate.

Rob has congenital brain abnormalities and is developmentally delayed. He needs activities to stimulate development. He has made some progress toward developmental milestones, but continues to be behind in his development. He has done well in foster care. The foster parents want to keep Rob in their family.

In May 1998, the State filed a petition to terminate the parental rights of Robert and Tina to Samantha. The juvenile court found neither parent had progressed to the point of being able to provide a safe environment for Samantha. The court terminated the parents' rights under section 232.116(1)(c).

The State filed a petition to terminate the parental rights of Robert and Michelle to Rob in April 1998. The juvenile court found that despite receiving services geared toward their mental capabilities, the parents were unable to demonstrate any retention of information. The court terminated the parental rights of Robert and Michelle to Rob pursuant to sections 232.116(1)(g) and (h).

Robert, Tina and Michelle appeal the decisions of the juvenile court terminating their parental rights. These cases were consolidated on appeal.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). 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 children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. ROBERT

Robert contends there is insufficient evidence in the record to show he is unable to provide a safe environment for Samantha. He states he was making progress in his parenting abilities. He asserts he was not really considered as a potential caretaker for Samantha, but DHS focused only on reuniting the child with

Tina. He claims mental impairment alone is not a sufficient reason for termination of parental rights.

We agree that mental impairment alone is not a sufficient reason for the termination of parental rights. However, from our de novo review of the record we find there is clear and convincing evidence to show Robert is unable to provide a safe environment for Samantha. He was not interested in interacting with Samantha during supervised visitation. Samantha appeared to be afraid of him, and there was no evidence of a bond between them. Robert continues to have problems with anger management. In addition, Robert's cognitive deficits make it unlikely he will be able to learn sufficient skills to successfully care for Samantha.

Robert also contends there is insufficient evidence in the record to show he is unable to provide a safe environment for Rob. He states there have been no acts of physical violence between the parents for quite a while. He asserts he is continuing to make progress in improving his parenting skills.

We find there is sufficient evidence to show Robert is unable to provide a safe environment for Rob. Robert remained unable to recognize and address Rob's needs. Robert needed constant reminders on how to safely hold Rob, how to make a bottle of formula, and other basic parenting skills. Furthermore, as previously noted, Robert still has problems with anger management. We conclude Rob would not be safe in Robert's care.

III. TINA

Tina claims her parental rights were improperly terminated under section 232.116(1)(c) because the circumstances which led to Samantha's removal no longer existed. She states she cleaned her home and made it safe. She points out she was cooperative with services.

The circumstances which led to the removal of Samantha continued to exist despite the receipt of services. Tina had received services from 1993 to 1995, but by 1997 could not remember the information she had previously received. While Tina was cooperative with services, she was only able to retain what she learned for a short period of time, and then she would regress. Also, Samantha did not feel safe in Tina's care, which caused her to act out after visits. Tina's parental rights were properly terminated under section 232.116(1)(c).

Tina asserts she was denied equal protection under the law because she was not given adequate time to demonstrate she could properly parent Samantha. She asks to have a longer time to show she can successfully parent her child.

We must reasonable limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1996). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa App. 1993). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). Children simply

cannot wait for responsible parenting. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Tina was given adequate time to demonstrate her parenting skills.

IV. MICHELLE

Michelle contends there is insufficient evidence in the record to show she cannot provide a safe environment for Rob. She asserts she is making progress towards all of the goals stated in the case plan. She claims her mental disability, standing alone, should not be sufficient reason to terminate her parental rights.

We agree mental disability standing alone is not sufficient to terminate parental rights. However, in our de novo review we find there is clear and convincing evidence to show Michelle cannot provide a safe environment for Rob. Michelle has difficulty retaining the information provided to her at parenting lessons. During supervised visitation, Michelle needed constant reminders on how to care for Rob. Michelle had problems with anger management and often became upset with services providers. She continues to have a combative relationship with Robert.

We affirm the termination of the parental rights of Robert to Samantha and Rob, the parental rights of Tina to Samantha, and the parental rights of Michelle to Rob.

AFFIRMED.