

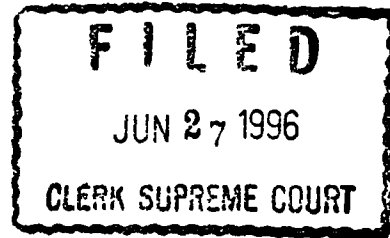
IN THE COURT OF APPEALS OF IOWA

No. 6-278 / 95-1044

IN THE INTEREST OF R.N.C., Minor Child,

**S.C., Mother,
Appellant.**

**C.W.C., Father,
Appellant.**



Appeal from the Iowa District Court for Woodbury County, Mary L. McCollum, Associate Juvenile Judge.

Mother and father appeal the juvenile court's order terminating their parental rights. **AFFIRMED.**

Shelley A. Horak, Sioux City, for appellant-mother.

Robert Tiefenthaler and Ruth M. Carter of Carter & Carter, Sioux City, for appellant-father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Dewey Sloan, Assistant County Attorney, for appellee-State.

Michael O'Brien, Sioux City, guardian ad litem for minor child.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

STREIT, J.

Sherry and Wayne C. appeal the district court order terminating their parental rights to their daughter, Rebecca. We affirm.

Sherry and Wayne are the parents of Rebecca, born November 4, 1993. Rebecca was placed in the custody of the Department of Human Services two weeks after she was born pursuant to an emergency removal order. Wayne and Sherry subsequently stipulated that Rebecca was a child in need of assistance, and she was adjudicated CINA following a January 4, 1994 hearing. The parties have had their parental rights to three other children terminated previously and have recently had a newborn infant removed from their care.

In March 1994, the State filed a petition to terminate Sherry's and Wayne's parental rights to Rebecca. The petition was dismissed by the juvenile court because Sherry and Wayne had sufficiently complied with court-ordered services. The court continued Rebecca's foster care placement, noting that Sherry and Wayne were in need of additional services before they could regain custody of Rebecca.

The State filed a second termination petition in April 1995 alleging Sherry and Wayne had not made themselves available for services and their current whereabouts were unknown. A termination hearing was scheduled for June 1995 and the parties were to be served with notice of the order setting hearing by publication. Counsel for each parent was also served with the petition and notice by mail.

At the hearing, Sherry's and Wayne's counsel indicated that their clients consented to the termination of their parental rights. Counsel acknowledged both parents wanted Rebecca placed with a California family who had previously adopted one of her siblings. Counsel also indicated that upon learning no specific adoptive home could be guaranteed, both parents still consented to the termination. The court entered an order terminating Sherry's and Wayne's parental rights pursuant to Iowa Code sections 232.116(1)(b), (c), (f), (g) and (h)¹. Sherry and Wayne appeal.

Our 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 (1985). We give weight to the juvenile court's findings of fact, especially with regard to the credibility of witnesses, but are not bound by them. *Id.* at 491-92.

Our primary concern in termination proceedings is the best interest of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We look to the child's long-range, as well as immediate interests. *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988). Insight for this determination can be gained from evidence of the

¹ The respective grounds for termination under each of these provisions are as follows: parent has abandoned or deserted child; child has been adjudicated CINA due to neglect, parents were offered or received services and circumstances remain unchanged; the child has been adjudicated CINA, the court has terminated parental rights with respect to another child in the family, the parent continues to lack ability or willingness to respond to services, and additional period of rehabilitation would not correct the situation; the child is three years of age or younger, was previously adjudicated CINA, has been out of parent's custody for at least six months, and cannot be returned at present; the child meets the definition of CINA and will likely be neglected despite the offer of services. Iowa Code §232.116(1) (1995).

parents' past performance, as that performance may be indicative of the quality of the future care the parent is capable of providing. *Id.* We will not terminate parental rights pursuant to Iowa Code section 232.116(1) absent clear and convincing evidence the requirements of each provision have been met. *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982).

Sherry and Wayne both contend on appeal they did not knowingly and voluntarily consent to termination of their parental rights. Our review of the record, however, reveals both parties discussed the termination proceedings with their attorneys during the week prior to the termination hearing and stated they would not resist the termination if the DHS recommended adoptive placement with the California couple. At the hearing, the DHS made such a recommendation, and counsel for both parents stated on the record that neither parent would contest termination in light of the DHS's recommendation. We find nothing to indicate counsel's decision not to resist the termination was the result of misinformation or lack of communication with Sherry and Wayne. Instead, the record shows the parties had not only discussed termination with their attorneys, but had also indicated to a DHS caseworker their desire to terminate their parental rights to Rebecca. Accordingly, we conclude the parties' attorneys accurately represented their clients' consent to the juvenile court and acted pursuant to the wishes and instructions of their clients. *See Dragstra v. Northwestern State Bank of Orange City*, 192 N.W.2d 786,

790-91 (Iowa 1971) (absent contrary evidence, attorney appearing for party is presumed to act with authority).

We further reject Wayne's and Sherry's claims they were denied due process based on a lack of effective notice of the termination proceedings. In the weeks prior to the termination hearing, Wayne's and Sherry's precise whereabouts were unknown. When they contacted their caseworker, they refused to give their current phone number and only stated they were somewhere in California. In an effort to provide Wayne and Sherry with notice of the hearing, the district court ordered they be served with notice by publication. It is unclear from the record whether such notice was ever provided. It is clear the parties' attorneys were served with the termination petition and notice by mail.

While we cannot condone the State's careless efforts to publicly notify Wayne and Sherry of the hearing, we find nothing in the record to indicate Wayne and Sherry were in fact unaware of the termination proceedings. Instead, both parties were provided notice of the proceedings through their attorneys and provided counsel with consent to the termination in the days and weeks prior to the hearing. As a result, we cannot say the parties' due process rights were violated by the State's failure to personally serve them with notice of the hearing. *See In re R.E.*, 462 N.W.2d 723, 724-26 (Iowa App. 1990) (continuing nature of CINA proceedings along with notice to mother's attorney provided mother with sufficient notice of termination proceedings where mother's whereabouts were unknown).

Finally, we find clear and convincing evidence supports the juvenile court's decision terminating their parental rights. Since the juvenile court's dismissal of the State's first termination petition, Sherry and Wayne have taken no steps to combat their substance abuse problems and have refused to participate in court-ordered services. Although they have moved to California, Sherry and Wayne have not kept the DHS informed of their exact whereabouts and have had no contact with Rebecca since December 1994. The parties' failure to take advantage of State services and refusal to maintain contact with their daughter provides clear and convincing evidence that termination of the parties' parental rights is in Rebecca's best interest. *See In re M.S.*, 519 N.W.2d 398 (Iowa 1994).

We have considered all of Sherry's and Wayne's arguments and find them to be covered by this opinion or without merit. We find clear and convincing evidence supports the district court's decision to terminate Wayne's and Sherry's parental rights. We affirm.

AFFIRMED.