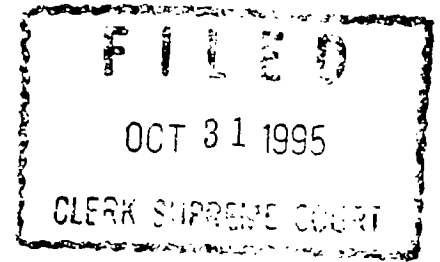


IN THE COURT OF APPEALS OF IOWA

No 5-456 / 95-342



IN THE INTEREST OF S.L.P. a/k/a S.L.A.,
Minor Child.

S.A., Mother,

Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

Mother appeals the district court order terminating her parental rights to her
minor child. **AFFIRMED.**

James R. McCoy, Iowa City, for appellant.

Sally Weyer of Bergan & Weyer, Iowa City, guardian ad litem for minor child.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, and Deborah F. Minot, Assistant County Attorney, for appellee State

Considered by Donielson, C J., and Hayden and Cady, JJ.

HAYDEN, J.

S.L.P. was born on May 10, 1994, at the University Hospitals in Iowa City. The mother, S.A., informed doctors she had used crystal methamphetamine the day before delivery. S.A. also gave a history using the drug daily for about one and one-half weeks prior to delivery, and since the fourth month of pregnancy. S.A. has a prior history of using LSD, cocaine, marijuana, amphetamines, and "downers." When born, S.L.P. tested positive for methamphetamine. S.A. also has an extensive psychiatric history including diagnoses for polysubstance abuse, antisocial personality disorder, overanxious disorder, conduct disorder, and brain atrophy. At the hospital, T.P., S.L.P.'s father, claimed paternity. T.P. has problems with alcohol dependency and a criminal history.

On May 12, 1994, the district court entered an emergency removal order placing S.L.P. with the Iowa Department of Human Services (DHS). S.A. was subsequently transferred to a drug rehabilitation program in Mount Pleasant for inpatient evaluation and treatment for substance abuse. S.A., however, left the program even though she was still under a commitment order.

S.L.P. was adjudicated a child in need of assistance on June 3, 1994. On June 20, 1994, T.P. and S.A. met with Chris Strand of the DHS to discuss what actions they would need to take in order to have S.L.P. returned to them. Strand sent a follow-up letter detailing at length the course of action they needed to take. Following this

meeting. Strand was unable to make contact with either parent until they contacted her on December 14, 1994. The State, however, had already filed a petition to terminate their parental rights on December 7.

Although S.A. had not seen the baby since May 17, the DHS set up supervised visitation after the December 14 contact. Eight visits were scheduled, but T.P. and S.A. attended only four. Cancellations were necessary due to inclement weather and the couple's car problems. S.A. and T.P. requested visits in Ottumwa, where they were located, but these requests were denied due to the lengthy time period during which they were not in contact with DHS.

At a dispositional hearing on July 22, the court found S.L.P. was thriving in foster care. Temporary care and custody of S.L.P. was transferred to her aunt and uncle. The juvenile court also adopted the case permanency plan set forth by DHS designed to place S.A. in a position to regain custody of S.L.P. The plan listed eleven responsibilities for S.A. to accomplish including: receiving substance abuse evaluation and treatment, psychological evaluation, and psychiatric treatment; requesting and participating in visits; maintaining a stable residence; avoiding criminal problems; remaining free from substances; avoiding abusive people; meeting with DHS; working with Systems on parenting skills; and, demonstrating the ability to parent.

At the termination hearing, S.A. admitted a long history of drug abuse. She stated she had contracted hepatitis from IV drug use. S.A. testified T.P. had an alcohol

abuse problem. S.A. also admitted she and T.P. had a transient lifestyle. T.P. testified he had been in prison a total of sixty-eight months for attempted burglary and first-degree theft. He also stated he spent thirty days in jail in 1994 for domestic abuse against his mother. T.P. admitted he was an alcoholic and he had consumed alcohol three months prior to trial. The DHS social worker testified S.L.P. was doing well in her placement and was extremely adoptable.

The court ruled T.P.'s and S.A.'s efforts to comply with the case permanency plan were inadequate. The court noted both parents failed to demonstrate the stability required to raise a child and had failed to take responsibility to seek treatment for their serious drug and alcohol problems. The court, upon concluding T.P. and S.A. had abandoned S.L.P. pursuant to Iowa Code section 232.116(1)(b) (1993), terminated their parental rights. S.A. has appealed. T.P. voluntarily filed a motion dismissing his appeal.

S.A. presents three grounds for her appeal. First, she argues the State failed to provide her with adequate services to prevent the need to terminate her parental rights. Second, S.A. argues the State failed to prove the statutory requirements for termination of her parental rights. In particular, she contends the State did not prove she *intended* to abandon S.L.P.. Lastly, S.A. argues the district court abused its discretion in denying her motion for a continuance prior to trial when it became known Christine Strand's supervisor would be testifying in Strand's place.

I. 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 (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 91-92.

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). In order to terminate a person's parental rights, the State must prove the existence of a valid ground for termination by clear and convincing evidence. *In re D.K.R.*, 454 N.W.2d 838, 841 (Iowa 1990).

With regards to S.A.'s claim the district court erred in declining to grant her motion to continue, 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 *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

II. Failure to Provide Adequate Services.

S.A. contends, given the extent of the effort she made toward fulfillment of the responsibilities in the case permanency plan, DHS did not make reasonable efforts to maintain and strengthen her noncustodial parent-child relationship. Iowa Code section 232.102(7)(1993) requires DHS to make reasonable efforts to provide services to reunify parent and child. We find, however, there is clear and convincing evidence DHS provided S.A. with numerous services in the past to correct her parenting problems. The facts of this case reveal DHS did more than an adequate job in its attempts toward reunification. S.A., however, failed to take advantage of the services offered

DHS set forth eleven responsibilities for S.A. within the problem and responsibility list of the case permanency plan. Some of the responsibilities were ongoing while others were to be accomplished by a date certain. The department prepared this plan for S.A. so she could place herself in a position to regain custody of S.L.P. The DHS made repeated attempts to contact S.A. to provide her the opportunity to visit S.L.P. DHS also gave S.A. the opportunity to receive an inpatient evaluation and treatment for substance abuse at the drug rehabilitation program at Mount Pleasant. After less than four days, however, S.A. left the treatment program

despite being under a commitment order. The caseworker assigned to this matter from its inception informed S.A. about the expectations for visitation and how to set up visits with the child. This information was given both orally and in writing. Visits were arranged on several occasions; however, for one reason or another, S.A. often failed to attend.

Despite these efforts by the DHS, S.A. failed to take advantage of the opportunities given to her. During the seven months prior to the termination trial, S.A. made only minimal progress toward working on the plan. In fact, S.A. failed to meet both the ongoing responsibilities and the responsibilities to be fulfilled at a time certain.

The plan required S.A. to obtain a substance abuse evaluation and treatment by August 1, 1994. She, however, did not obtain the evaluation until January 26, 1996 -- one month before trial. Furthermore, the follow-up treatment recommended was not going to begin until March 1, 1995, and the program would take eighteen months to complete. S.A. was also ordered to abstain from all substances. S.A., however, did not complete the substance abuse rehabilitation program to which she was committed in May 1994. She also testified she started using drugs again around July 4, 1994, and continued to use IV drugs until shortly after Thanksgiving.

The plan also required S.A. to obtain a psychological evaluation by September 1, 1994. As of the time of trial, however, she had not obtained the evaluation.

Although S.A. was also ordered to receive psychiatric treatment, she has not received any such treatment since May 1994.

S.A. did not meet or attempt to meet other responsibilities of the plan. For instance, the plan required her to maintain her own residence, avoid criminal problems, and refrain from abusive people. S.A., however, had no stable residence until December 1994. Additionally, she was arrested three times following S.L.P.'s birth, one such arrest was for domestic abuse.

The plan also required S.A. to visit S.L.P., meet the DHS caseworker, work with Systems Unlimited on her parenting skills, and demonstrate the ability to parent. S.A. did not visit S.L.P. from May 17, 1994, until January 1995--the month before trial. The visits from January up until the trial totaled only four hours. Further, S.A. did not contact DHS from June 20, 1994, until December 14, 1994, and she never met with Systems Unlimited. S.A. did nothing to demonstrate the ability to care for her child in an appropriate manner.

S.A. claims she made significant progress in fulfilling the eleven responsibilities during the nine-month period between S.L.P.'s birth and the trial date. She also claims to have curtailed her violent abusive speech and physical behavior. We, however, can find little evidence of such progress.

S.A. emphasizes only two of the eleven responsibilities listed had to be accomplished by a date certain and she should be given more time to comply. It is true

the law demands patience with a troubled parent who is trying to remedy a lack of parenting skills. *See In re B.K.J., Jr.*, 483 N.W.2d 806, 611 (Iowa 1993). However, some measure of effort must be put forth by the parent. *Id.* S.A. has not made any such effort.

Furthermore, this child should not be forced to endlessly await the maturity of her mother. *Id.*; *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). S.A. and T.P. testified it would take an additional six to twelve months before they would be ready to have S.L.P. returned to them. Further, if S.A. decides to seek substance abuse treatment, the program would take eighteen months to complete. This child should not be required to wait any longer.

Courts have held evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). S.A. has at no time exhibited the ability to properly parent a child.

We agree with the juvenile court judge when she stated S.A.'s efforts to comply with the case permanency plan and become able to care for this child were "too little and too late." It is evident S.A. did not put forth the effort needed to regain custody of her child despite numerous opportunities provided by DHS. We find the State of Iowa did provide adequate services to S.A. to prevent the termination of her parental rights. We affirm.

III. Termination of Parental Rights.

One of the grounds for termination of parental rights under Iowa Code section 232.116 is abandonment of the child. In the case at bar, the juvenile court found S.A. and T.P. abandoned S.L.P. within the meaning of Iowa Code section 232.2(1). This court agrees.

Clear and convincing evidence is required to establish abandonment. Iowa Code § 232.116(1)(b) (1991). Abandonment is defined as follows:

"Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (1991). As such there are two elements necessary to establish abandonment: 1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and, 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981) Affirmative parenting to the extent practical and feasible in the circumstances is required. *Id.* It is not enough to subjectively maintain an interest in the child. *Id.*

There is clear and convincing evidence S.L.P. was abandoned by her biological mother, S.A. As stated above, fulfilling parental responsibilities requires affirmative parenting. S.A. has not exhibited affirmative parenting of S.L.P. For at least six months following the child's birth, S.A. did not make any contact with the child nor did

she provide any parental support for the child. After the child's birth in May 1994, S.A. did not visit the child until January 1995, the month before the trial. In fact, S.A. only saw her child a total of four hours in 1995 despite knowing where the child was and how to arrange visits with her. S.A. also failed to provide her child with financial or emotional support.

Furthermore, as stated in Part II above, S.A. made no meaningful attempt to follow the case permanency plan. S.A. exhibits instability, no desire to stop her drug use, and the inability to avoid legal problems. Although it is not our place to pass moral judgment, it is the function of this court to intervene when a parent's overall life-style is harmful to a child's best interests. *See In re Rice*, 236 N.W.2d 40, 43-44 (Iowa 1975)

We find there is clear and convincing evidence S.A. abandoned her child. Her conduct was consistent with forfeiting her parental rights, and she also had the requisite intent to abandon the child. We determine termination of S.A.'s parental rights and freeing the child up for adoption is in the best interests of the child. We affirm.

IV. Refusal to Grant Motion to Continue.

Before trial was to begin, S.A. filed a motion to the court to continue on the basis the State was going to substitute the regular caseworker's testimony with the testimony of the caseworker's direct supervisor. S.A. argues this substitution violated her due process right to effectively cross-examine the witness.

The regular caseworker, who was assigned to this matter since its inception, was out on maternity leave and could not attend the trial. The person substituted had directly supervised the regular caseworker during the time services were provided to S.A. The supervisor met regularly with the caseworker to discuss the progress of the case and reviewed and signed off on each progress report submitted by the caseworker. Additionally, the supervisor testified she had a working familiarity with the facts of the case and was comfortable testifying about the case.

In reviewing a denial of a request for a continuance for abuse of discretion, the court considers three factors: (1) whether the motion was filed immediately upon learning of the problem; (2) whether the reason for the motion was the movant's fault; and, (3) whether justice could have been more nearly obtained by granting the request. *See In the Interest of R.B.*, 493 N.W.2d 897, 898-99 (Iowa App. 1992).

S.A. filed the motion immediately upon learning the caseworker would not be present at the trial. Additionally, the reason for the motion was not due to any fault on S.A.'s part. We find, however, justice was not more nearly obtained by granting the request for a continuance. We agree with the juvenile court judge who overruled the motion stating, "[I]t is not in the best interest of the child that this matter be continued. Considering the child's young age, her future should be resolved . . ." In addition to finding a continuance against the best interest of the child, we find S.A. was not prejudiced by the denial of her motion to continue. The supervisor was knowledgeable

about the facts of the case, and S.A.'s attorney was able to give a lengthy, effective cross-examination of the supervisor

The juvenile court did not abuse its discretion in refusing to grant S.A.'s motion to continue. It was in the child's best interest to proceed with the trial in order to determine her future. The denial did not violate S.A.'s right to effectively, fully, and completely cross-examine the State's witness. We affirm

AFFIRMED.