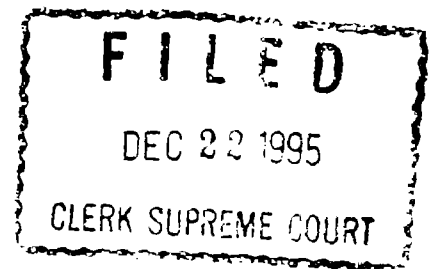


IN THE COURT OF APPEALS OF IOWA

No. 5-689 - 95-0389



IN THE INTEREST OF N.W. and R.W., JR., Minor Children.

M.W., Mother.

Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Judge.

Mother appeals the termination of her parental rights. **AFFIRMED.**

Todd E. Babich of Babich, McConnell & Renzo, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant
Attorney General, for appellee.

Katherine Miller and Mike Bandstra, Youth Law Center, Des Moines.
guardians ad litem for minor children.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Michelle appeals the termination of her parental rights. Michelle is the mother of Nicole, born September 3, 1990, and Richard, Jr. born November 30, 1992. Upon our de novo review of the proceedings, *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993), we find there is clear and convincing evidence to support the termination of Michelle's parental rights.

Nicole and Richard Jr. were removed from Michelle's care in June 1993. On September 19, 1994, a petition to terminate Michelle's parental rights was filed. The termination hearing was originally scheduled for November 2, 1994. On October 28, 1994, the attorney appointed to represent Michelle filed an application requesting a court order for the provision of transportation to ensure Michelle's presence at the hearing. The application indicated Michelle was incarcerated at the Oakdale Correctional Facility and wished to be present for the termination hearing. A court order was filed on October 28 requiring the transportation of Michelle to the hearing.

Michelle appeared for the termination hearing scheduled for November 2, 1994. At that time the juvenile court found Michelle was incarcerated and had not received legal notice of the petition nor had a guardian ad litem been appointed for her. The court continued the termination hearing to December 22, 1994, and

appointed Christine Bisignano to act as both Michelle's attorney and her guardian ad litem.

On December 16, 1994, Michelle filed another application asking the court to provide transportation for her to insure her presence at the December 22 termination hearing. This application indicated Michelle was presently incarcerated at the Mitchellville Correctional Facility and wished to appear at the rescheduled termination hearing. Michelle did not appear for the December 22, 1994, termination hearing. At that time her counsel waived Michelle's presence and withdrew the December 16 application. Ms. Bisignano informed the court of her client's decision to consent to the termination of her parental rights --

On behalf of the childrens' [sic] mother, I have been appointed as her attorney and guardian ad litem. [Michelle] is currently incarcerated at the Iowa Correctional Facility for Women in Mitchellville and on her behalf, I'll be waiving her presence at today's proceeding.

I've received two written letters from her indicating she would like to consent to the termination of her parental rights with respect to the two children at interest here today. I was in hopes that I could get out to Mitchellville this week and have that document signed, but unfortunately, I was not able to.

Your Honor, I know of no reason why she would revoke her consent and I would state for the record that she is consenting to the termination, and as soon as the consent form has been returned to my office, I'll file it with the juvenile court and drop a copy off for you so you know it has been filed.

At the conclusion of the December 22 termination hearing, the court announced it would hold the record open for thirty days for the filing of Michelle's

consent to terminate her parental rights. Michelle executed forms consenting to the termination of her parental rights to Nicole and Richard, Jr. on January 12, 1995, and those forms were filed with the court on January 18, 1995. On February 3, 1995, the juvenile court entered an order terminating Michelle's parental rights.

Michelle's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(a), (e) and (g). Michelle does not appear to challenge the propriety of the termination pursuant to sections 232.116(1)(e) and (g). Instead, she argues the juvenile court erred in not requiring her presence at the hearing in order to determine whether her consent was intelligent and voluntary. The relevant statutory language provides --

[T]he court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds: The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

Iowa Code § 232.116(1)(a) (1993).

In her brief Michelle claims "she should have been present at the termination hearing, as she would not have consented to the termination of her parental rights, as it was not made intelligently and voluntarily." She argues her absence from the hearing made it impossible for the juvenile court to ensure her decision was freely made and not coerced.

The record does not support Michelle's arguments. Michelle had the assistance of legal counsel prior to and after the termination hearing. Michelle does not dispute that in two letters to her counsel she informed her attorney of her decision to consent to the termination of her parental rights.

Subsequent to the hearing Michelle completed two forms consenting to the termination of her rights. In each form she set forth her incarceration and inability to care for her children as good cause for terminating her parental rights. In both forms she stated termination was in her children's best interests as she was not presently, and would not in the near future, be in a position to raise them.

Of particular significance in this case is that Michelle executed the consent forms three weeks after the termination hearing. At no point in her appellate brief does she reference these forms. We are without an explanation as to how Michelle's conduct in completing the consent forms is consistent with her allegation that she had changed her mind about consenting to the termination and would have resisted the State's petition if she had been personally present at the termination hearing.

Given the facts of this case, the juvenile court had a sufficient basis from which to conclude Michelle's consent was voluntarily and intelligently made. We affirm the termination of her parental rights.

AFFIRMED.