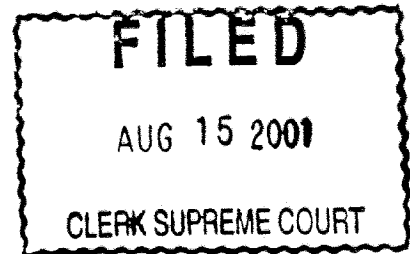


IN THE COURT OF APPEALS OF IOWA

No. 1-493 / 01-0275
Filed August 15, 2001



IN THE INTEREST OF
T.S., T.S., and S.S., Minor Children,
T.S., Mother,
Appellant.

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop,
Associate Juvenile Judge.

Mother appeals from the order terminating her parental rights to her three
children. **AFFIRMED.**

Randal J. Giannetto and Erin Broadston of the Mowry Law Firm,
Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney
General, and James DeTaeye, County Attorney, for appellee-State.

Kevin M. O'Hare and Reyne L. See of Johnson, Sudenga, Latham,
Peglow & O'Hare, P.L.C., Marshalltown, guardians ad litem for minor children.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her three minor children. She claims the court did not adequately consider the close bond she has with the children. She also claims the State did not adequately show the children could not be returned to her care. We affirm the decision of the juvenile court.

Tracy and Robert are the parents of Toni, born in April 1989; Taylor, born in November 1991; and Stephanie, born in December 1995. Tracy has a history of depression. The parents have an unstable relationship, which involved incidents of domestic abuse.

The parents voluntarily began services in October 1998 after the State filed a petition to have the children adjudicated as children in need of assistance. The juvenile court continued the matter for six months to allow the parents to maintain an adequate residence. Tracy was temporarily hospitalized in December 1998 for mental health issues. In January 1999 school officials became concerned because Toni had many absences from school, and her parents were not consistently treating her for head lice. Services ceased in February 1999 due to lack of cooperation by the family.

In April 1999 Robert was arrested for nonpayment of fines. During a search of the home, police officers found materials for the production of methamphetamine. The parents agreed to place the children in the care of a maternal aunt. The children were adjudicated to be children in need of

assistance pursuant to Iowa Code section 232.2(6)(g) (1997).¹ The parents were ordered to complete substance abuse evaluations. Tracy was also ordered to return to mental health services.

Tracy was arrested in September 1999 for assaulting Robert during a domestic abuse class. In October 1999 the children were placed in foster care because of conflicts between the maternal aunt and the parents. The parents had not complied with services. The juvenile court ordered the parents to have random drug tests. Tracy tested positive for methamphetamine in December 1999 and April 2000. She did not always provide a drug test as requested.

Robert entered a halfway house in April 2000. After his release he moved to a different town. Robert and Tracy have been separated since this time, although they remain in contact. Tracy has not been able to maintain a stable residence or employment. Tracy had a relapse into drug use in October 2000.

Toni and Taylor attend individual therapy. Toni has symptoms similar to Post-Traumatic Stress Syndrome. Stephanie attends play therapy to help her address behavioral problems such as urinating or defecating on the floor. The children were exposed to pornography in the home, and there have been problems with inappropriate touching between Taylor and Stephanie. The children were well aware of their parents' drug use. In fact, Taylor stated his parents had encouraged him to smoke a marijuana pipe with them.

¹ This section applies when a parent, "fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials." Iowa Code § 232.2(6)(g).

In October 2000 the State filed a petition to terminate the parental rights of Tracy and Robert to the three children. Tracy got into an argument with a social worker in November 2000. Tracy made threats, stating, "you don't even want to know me if my rights get terminated," and "I will blow up in that courtroom." She missed a meeting with a social worker to visit Robert. Tracy received a bruise when she and Robert had a fight and he threw a shoe at her. That same month Tracy tested positive for marijuana. Due to her depression, Tracy was sleeping all day about four days each week.

The termination hearing was held in December 2000. The juvenile court terminated the parents' rights to the children under section 232.116(1)(e) (1999). The court found the children could not be returned to the parents' care. The court stated:

The strongest concern is that if returned, these children would suffer harmful effects or would be imminently likely to suffer harmful effects as a result of the failure of the parent to exercise a reasonable degree of care in supervising the child.

The court noted the children needed a home with a great deal of structure and consistency in rules and expectations, which the parents could not provide. Tracy appeals.

I. Scope of Review.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

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II. Best Interests.

Tracy contends it is not in the children's best interests to terminate her parental rights. She points out that under section 232.116(3)(b) a court need not terminate parental rights if the court finds, "the child is over ten years of age and objects to the termination." Toni is more than ten years old, and there was evidence she wanted to return to her mother's care.

We question whether this issue has been preserved for our review. The termination order did not address any issues raised by section 232.116(3). Tracy did not file a motion pursuant to Iowa Rule of Civil Procedure 179(b). An issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). By failing to file a 179(b) motion in juvenile court, Tracy waived this issue. See *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994).

If we were to proceed to address this issue on the merits, we would find the juvenile court did not abuse its discretion in terminating Tracy's parental rights. Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *J.L.W.*, 570 N.W.2d at 781. We must consider a child's long-range and immediate best interests. *In re A.B.*, 492 N.W.2d 446, 450 (Iowa Ct. App. 1992).

It is in the children's best interests to terminate Tracy's parental rights. Tracy has not been able to get over her substance abuse problems. She was

using illegal substances within about one month of the termination hearing. Also, she was still having mental health problems, and was sleeping most of the time. Tracy would not be able to meet the children's needs, and thus, it would not be in their best interests to be returned to her care.

III. Sufficiency of the Evidence.

Tracy asserts the State did not present sufficient evidence to warrant termination of her parental rights. Specifically, she claims there was insufficient evidence the children could not be returned to her care. Tracy states she had an apartment and she was going to start employment the day after the termination hearing. She states she has tried to overcome her substance abuse problems, but has had a few relapses.

A court must reasonably 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 Ct. App. 1996). 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 Ct. App. 1993). At some point, the rights and needs of the child rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

We determine the children could not be returned to Tracy's care at the present time. The evidence showed Tracy was still using illegal substances. In addition, Tracy had not fully addressed her mental health problems. Tracy admitted she was sleeping most of the time, which would leave her unavailable

to supervise the children. Furthermore, Tracy was still involved with Robert, and there were continuing altercations between them. Based on all of these factors, we conclude Tracy's parental rights were properly terminated.

We affirm the decision of the juvenile court that terminated Tracy's parental rights to her three children.

AFFIRMED.