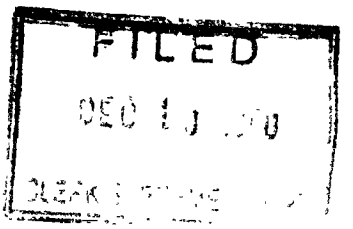
IN THE COURT OF APPEALS OF IOWA

No. 0-763 / 00-47
Filed December 13, 2000

IN THE INTEREST OF
T.L., T.C., T.C., T.C., and T.C.,
Minor Children,

T.C., Mother,
Appellant,

T.C., Father,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

Mother and father appeal from the termination of their parental rights. **AFFIRMED.**

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant-mother.

Donna Lesyshen of Lesyshen Law Firm, Waterloo, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee-State.

Kellyann Lekar of Roberts & Stevens, P.L.C., Waterloo, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

A mother and father appeal the decision of the juvenile court terminating their parental rights to their minor children. The mother claims she did not receive reasonable services and termination is not in the best interests of the children. The father claims the State did not present sufficient evidence to justify termination of his parental rights, and termination was not in the best interests of two of the children. We affirm on appeal.

Tony and Tammy are the parents of Timothy, born in August 1988; Tiffany, born in July 1990; Tommy, born in December 1991; and Tonya, born in December 1992. Tammy is also the mother of Theresa, born in August 1986. Theresa's father has not been involved in her life and is not involved in this appeal.

The parents have a history of domestic violence. Tony is an alcoholic. The family came to the attention of the Department of Human Services (DHS) in July 1993, due to concerns about Timothy assaulting others in school. The family again came to the attention of DHS in February 1994 because the parents were not taking Timothy to recommended mental health counseling. In March 1994, DHS issued a founded report of denial of critical care against Tony because he was intoxicated while caring for the children. The family agreed to receive family-centered services.

The parents made no progress with services. Tammy suffered from chronic depression, but refused to take prescribed medication. She was admitted to a psychiatric unit for a short period of time because she considered suicide. Tammy was arrested for stealing a credit card and placed on probation.

Tony was arrested for operating while intoxicated (OWI). He attended a residential substance abuse treatment facility, but later returned to drinking alcohol. In February 1996, the children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2), (f), and (n).

Tony and Tammy separated in October 1996. In January 1997, Tony was arrested for public intoxication. Timothy was admitted to a psychiatric unit for threatening to harm himself. He was diagnosed with attention deficit hyperactivity disorder, conduct disorder, and oppositional defiant disorder.

In February 1997, Tony was sentenced to thirty days in jail for violating a juvenile court order which prohibited him from consuming alcohol. Later that month, Tammy voluntarily placed the children in foster care, in part because she was unable to secure suitable housing for herself and the children. Upon Timothy's discharge from the psychiatric unit in March 1997, he was placed in therapeutic family foster care.

In July 1997, Tony was arrested for OWI. The children were returned to Tammy's care, except for Timothy, who remained in therapeutic foster care. Tony had visitation with the children under Tammy's supervision. In October 1997, Timothy was also returned to Tammy's care. By December 1997, Tammy and the five children were homeless. The children were again removed from Tammy's care and placed in foster care. The parents reunited and moved into a home together.

Due to revocation of her probation, Tammy was incarcerated in March 1998. The parents were divorced while Tammy was in prison. In May 1998, the children, except Timothy, were placed in the home of the paternal grandmother.

Tony also resided in the home. In June 1998, the grandmother moved to Louisiana. The juvenile court allowed the children to remain in Tony's care, with the understanding he would cooperate with services. Later that month, the children were returned to foster care for a third time after Tony had a drug test which showed positive for cocaine. Tony was sent to a work release facility, based on his previous OWI conviction. After Tammy was released from prison, the parents reconciled again.

DHS attempted to reunite the children with both parents in September 1998. In December 1998, Tony, while he was intoxicated, drove a car with four of the children as passengers and hit a street sign. The children were placed in foster care for a fourth time. Both parents were using illegal drugs in December 1998. They each attended a substance abuse treatment program. The parents told social workers they did not intend to remain together as a couple, however, their lives remained enmeshed.

In April 1999, the State filed a petition for termination of the parental rights of Tony, Tammy, and Theresa's father to these children. The parents continued to have problems with illegal drugs. The parents had a psychological evaluation in August 1999. Tony was diagnosed with an adjustment disorder and a personality disorder, as well as alcohol dependence. Tammy was diagnosed with a delusional disorder and a personality disorder. Tony continued to test positive for alcohol and illegal drugs in August and September 1999. Tony was arrested for probation violations in September 1999. He remained in jail at the time of the termination hearing in October 1999. He was scheduled to enter a work release facility.

The juvenile court issued an order in December 1999 terminating the parental rights of Tony, Tammy, and Theresa's father. The court terminated the parental rights of Tammy under section 232.116(1)(e) and the parental rights of Tony under sections 232.116(1)(e) and (k). The court found the children could not be returned to the parents' care at the present time. The court found the father's unabated substance abuse and legal problems rendered him unable to serve as a parent. The mother's dependence on the father resulted in her inability to protect the children. The court found termination was in the best interests of the children. The parents separately appealed.

I. Scope of Review

The scope of review in termination cases is de novo. *In re J.W.*, 570 N.W.2d 778, 780 (Iowa 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 App. 1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Tammy

A. Reasonable Efforts

Tammy asserts the State should have provided her with services to address her dependency on Tony. The juvenile court stated, "[The] mother's dependency upon [the] father results in her inability to properly parent by refusing to protect her children from the negative effect of [the] father's addiction." Tammy claims the State should have assisted her to make a firm break from her relationship with Tony.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1997). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). We could find no evidence in the record to show Tammy requested additional services prior to the termination hearing. This issue has not been preserved for our review.

B. Best Interests

Tammy contends termination of her parental rights is not in the children's best interests. She states the children have a strong bond with the parents. She also points out there are no guarantees the children will be adopted.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We determine termination of Tammy's parental rights is in the children's best interests. Many efforts were made over a long period of time to reunite Tammy with the children. Tammy continued to let her legal problems, her substance abuse problems, and her relationship with Tony take precedence over the children. Tammy has separated from Tony, and even divorced him, but

keeps returning to her relationship with him, and putting this relationship before the interests of the children. After many years of services, and several reunification attempts, Tammy was still not in a position to be a parent to the children.

The trial court recognized there were no guarantees the children would be adopted, but determined termination was in the children's best interests. A DHS adoption specialist testified the children are considered adoptable. The children need permanency and a stable home. Although we do not have a crystal ball to look into the future, we can look at Tammy's past history and find she was unable to provide permanency and stability for the children. Based on the law and the facts of this case, we determine termination is in the best interests of the children.

III. Tony

A. Sufficiency of the Evidence

Tony claims the State did not present sufficient evidence to warrant termination of his parental rights under section 232.116(1)(k). Tony's parental rights were terminated under sections 232.116(1)(e) and (k). He does not raise any argument regarding section 232.116(1)(e), which means he has waived this issue. *See* Iowa R. App. P. 14(a)(3). When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Because Tony has waived any argument on appeal regarding section 232.116(1)(e), we may affirm on this ground without considering his arguments concerning section 232.116(1)(k).

Even if we were to address Tony's arguments regarding section 232.116(1)(k), we would find there is sufficient evidence in the record to terminate Tony's parental rights under this section. There is clear and convincing evidence to show Tony has a severe, chronic substance abuse problem and presents a danger to himself and others. Furthermore, there was clear and convincing evidence the children will not be able to be returned to Tony's care within a reasonable period of time. The evidence showed Tony has a long history of using alcohol and illegal drugs. Tony's drinking presented a danger to himself and the children. In December 1998, Tony was driving while intoxicated with four of the children in the car, and he hit a street sign. Tony also had many legal problems relating to his drug and alcohol use and was in jail at the time of the termination hearing. Tony's parental rights were properly terminated.

B. Best Interests

Tony asserts his parental rights to Timothy and Tiffany should not have been terminated. Both of these children have behavioral problems, and Tony states they are unlikely to be adopted.

We find termination of Tony's parental rights to Timothy and Tiffany is in their best interests. Because of these children's behavioral problems, they have an additional need for stability. To continue with the unsuccessful attempts at reunification, as they have occurred in the past, would not be in the children's best interests. As we discussed in regard to Tammy, while we do not have a crystal ball to look into the future, in looking at Tony's past, we find he was unable to meet the children's needs. Although there are no guarantees the

children will be adopted, they deserve at least a chance to be adopted into a stable, loving home.

We affirm the decision of the juvenile court.

AFFIRMED.