

IN THE COURT OF APPEALS OF IOWA

No. 9-141 / 98-897

**IN THE INTEREST OF
A.M.C. and J.A.C., Minor Children,**

A.M., Mother,

Appellant.

FILED

APR 30 1999

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
Associate Juvenile Judge.

Mother appeals a juvenile court order which terminated her parental rights to
her two children. **AFFIRMED.**

Richard Kallsen, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Rhoda Tenuta, Assistant County Attorney, for appellee.

Joseph Kertels, Sioux City, guardian ad litem for minor child.

John S. Moeller of O'Brien, Galvin & Moeller, Sioux City, for grandparents.

Considered by Sackett, C.J., Streit, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

Angela and John are the parents of Alicia, born in August 1987, and Justin, born in October 1988. Angela appeals the decision of the juvenile court which terminated her parental rights to these children. We affirm on appeal.

When the family first came to the attention of the Department of Human Services (DHS) in 1991, Angela and John were separated. DHS issued a founded report Angela and her paramour, Chad, had physically abused the children by spanking the children and leaving bruises. The children were adjudicated to be children in need of assistance. Angela and John were divorced in 1992. John received custody of the children and Angela had visitation rights. The juvenile court action was then dismissed.

In 1992, DHS issued a founded report Chad had physically abused Justin by striking him with a belt during visitation. Angela did not have visitation for more than two years. Angela has since ended her relationship with Chad. She resumed visitation in the spring of 1996.

In July 1996, John decided he could no longer care for the children and left them with Angela. Angela took the children to the home of the paternal grandparents in August 1996 due to the children's behaviors and her emotional state. The parties stipulated the children were in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c), (g), and (k). The juvenile court placed the children in the care of the paternal grandparents.

Angela has problems with alcoholism. Under the case permanency plan, Angela was required to obtain psychosocial and substance abuse evaluations and follow all recommendations, attend individual therapy, and work with social workers to improve her parenting skills.

Angela obtained a psychosocial evaluation, which recommended treatment for alcoholism, treatment for male dependency, and family therapy. A psychological evaluation found evidence of an addictive disorder. Angela was diagnosed with major depression in a psychiatric evaluation. She began to participate in a family strengthening program and individual counseling. She attended supervised visitation with Alicia. At times, Justin refused to attend visitation.

Initially, Angela denied any problems with alcohol and refused to attend treatment. In December 1996, she was arrested for operating while intoxicated and driving while license under suspension. She then successfully completed an alcohol treatment program.

In April 1997, the grandparents refused to cooperate with continued supervised visits. Angela asked to have the children moved to a different foster home. After a court hearing, the grandparents agreed to cooperate with visitation and the court allowed the children to remain in their care. In May 1997, Angela decided not to continue participation in visitation. Her participation in services became sporadic.

In August 1997, Angela asked to have visitation reinstated. DHS asked her to meet with the children's therapist before visitation would begin. Angela made two appointments with the therapist, but did not attend either time. Thus, Angela has not had visitation with the children since May 1997.

The children have done well in the care of the grandparents. The children have some behavioral problems. They have made progress since attending individual therapy. The grandparents have made a commitment to continued care of the children and have discussed adoption with DHS. DHS is recommending adoption by the grandparents instead of a guardianship.

The State filed a petition to terminate the parental rights of Angela and John in December 1997. The juvenile court terminated Angela's parental rights pursuant to sections 232.116(1)(c), (d), (e), and (h). John's parental rights were also terminated. The court found the children could not be returned to the parents' care within the foreseeable future. Angela appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Angela contends the State did not present sufficient evidence to justify termination of her parental rights. One of the grounds for terminating Angela's

parental rights was section 232.116(1)(e), which requires that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been for less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(e).

The children here were nine and ten years old at the time of the termination hearing. The children had been adjudicated to be children in need of assistance. They had been out of the parents' care since August 1996, a period of some seventeen months before the termination hearing. Finally, during testimony, Angela admitted she could not immediately resume care of the children. We conclude there is clear and convincing evidence to support termination of Angela's parental rights under section 232.116(1)(e).

III. 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 we determined Angela's parental rights were properly terminated under section 232.116(1)(e), we do not need to address her claims regarding sections 232.116(1)(c), (d), and (h).

IV. Angela asserts the State did not engage in reasonable efforts to reunite her with the children. She claims the State should have provided her with more services during the period of time she had the children in her care before she turned them over to the grandparents. She also claims the State did not offer her any services which were designed to reunite her with the children.¹

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. 1994). 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 Angela requested additional or different services prior to the termination hearing. Thus, we conclude she has not preserved this issue for our review.

¹ The juvenile court in its termination order detailed the various services provided to the mother. Those services, as found by the juvenile court, are:

42. Angela has been provided with numerous services including Home Care Services, St. Luke's Gordon Recovery Center, and St. Luke's In-Home Services. Following the most recent Child in Need of Assistance adjudication, Angela was provided with services through the Crittenton Center's Parental Survival Program. Since the June 16, 1997, Court hearing, Angela's involvement with the Parent Survival Program has been sporadic. Angela has also been involved with services through the Department of Corrections.

43. Angela was provided with therapy through the Crittenton Center. During the sessions, Angela was provided with information about male-dependency so that she could identify co-dependent characteristics in her personality and life with hopes that Angela could then use this self-awareness to determine a plan of change, thus breaking the cycle of bad relationships. However, Angela either did not read the information provided by workers or failed to complete assignments which were designed to help her reach insight into her own behavior.

V. Angela claims termination of her parental rights is not in the best interests of the children. She asserts the State failed to show the children would be better off if her parental rights were terminated than if they were reunited with her. She also asserts the juvenile court's decision rewards the grandparents, who consistently interfered with her visitation rights.

In determining the best interests of the children, a court looks to the children'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 children in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We must reasonably limit the time for parents to be in a position to assume care of their children because patience with children can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1996). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa App. 1993). 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 App. 1993). Children simply cannot wait for responsible parenting. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

We find termination of Angela's parental rights is in the best interests of Alicia and Justin. Angela's problems did not arise due to the grandparents, but due to her

own lack of commitment to the children.² Angela had no contact with the children for more than two years prior to resuming visitation in the spring of 1996. When John placed the children in her care in July 1996, she kept them only a short time before placing them with their grandparents. Angela's claims regarding fear of a kidnaping charge because her visitation time was over do not ring true, because she was entitled to several weeks of visitation time in the summer. Furthermore, Angela voluntarily ended visitation in May 1997. Although she could have resumed visitation once she met with the children's therapist, she did not take this step, and visitation was never resumed.

We affirm the decision of the juvenile court to terminate Angela's parental rights to Alicia and Justin.

AFFIRMED.

² During the termination hearing, the juvenile court met with the children in chambers and questioned them about their mother. Alicia, then ten years old, told the judge she was happy living with her grandparents, it did not bother her to not see her mother, and "it doesn't really matter" if she saw her mother. Justin, then nine years old, told the judge he liked living with his grandparents, he wanted to stay with them, he could not remember the last time he had seen his mother, and he did not want to see her in the future.

No. 98-897. [9-141] IN RE A.M.C. and J.A.C.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge. **AFFIRMED.** Considered by Sackett, C.J., Streit, J., and Habhab, S.J. Opinion by Habhab, S.J. (8 pages \$3.20)

Angela and John are the parents of Alicia and Justin. In 1991, the Department of Human Services (DHS) issued a founded report that Angela and her paramour, Chad, had physically abused the children. The children were adjudicated children in need of assistance. Angela and John were divorced in 1992, with John receiving custody and Angela receiving visitation rights. Soon after the DHS issued another founded report against Chad for physical abuse. Angela's visitation ended for two years. In the spring of 1996, after her relationship with Chad ended, she resumed visitation. In the summer of 1996, John decided to give the children to Angela. Angela took the children to the home of the paternal grandparents. The parties stipulated the children were children in need of assistance, and the juvenile court placed them in the care of the grandparents. Angela was required to deal with her alcoholism through numerous requirements set out by the case permanency plan. She began to participate in strengthening programs and individual counseling, as well as resuming supervised visitation. In May 1997, Angela decided not to participate in visitation and her participation in services became sporadic. Three months later, she asked to have visitation reinstated. The DHS asked her to meet with the children's therapist prior to resuming the visits. Angela did not attend the scheduled sessions, thus she has not had visitation since May 1997. The juvenile court terminated Angela and John's parental rights pursuant to Iowa Code §§232.116(1)(c),(d), (e) and (h). Angela appealed. **OPINION HOLDS: I.** The scope of review in termination cases is de novo and termination must be proven by clear and convincing evidence. **II.** Angela contends the State did not present sufficient evidence to justify the termination. We viewed the facts of the case as applied to section 232.116(1)(e) and found there was clear and convincing evidence to support the termination under this section. The children were over the age limit, had been adjudicated CINA, had been out of the home the required time and the children could not be returned to the parent at the present time. **III.** When the juvenile court terminates parental rights on more than one statutory ground, we need only to find grounds to terminate under one of the sections cited by the court to affirm. Because we already found the termination was proper under one section, we did not address Angela's claims regarding the remaining sections. **IV.** Angela asserts the State did not use reasonable efforts to reunite her with her children. The State must make reasonable efforts, but it is the parent's responsibility to demand them prior to the termination hearing. We could find no evidence Angela requested services prior to the hearing; thus she has not preserved this issue for appeal. **V.** Angela's final claim is termination is not in the best interests of the children. Angela's problems were due to her own lack of commitment to the children. Angela had no contact with her children for large periods of time and she chose not to following the requirements to resume visitation. We find termination is in the best interest of the children.