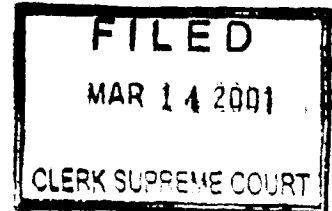


IN THE COURT OF APPEALS OF IOWA

No. 0-843 / 00-1505
Filed March 14, 2001



IN THE INTEREST OF
S.S., C.S., E.S., and B.S., Minor Children,

T.S., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County, James Weaver,
District Associate Judge.

A mother appeals from an order terminating her parental rights to her four
children. **AFFIRMED.**

Esther J. Dean, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Teresa Stoeckel, Assistant County Attorney, for appellee.

William Creasey of Goedken & Creasey, Muscatine, guardian ad litem for
minor children.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

A mother appeals from the juvenile court order terminating her parental rights to her four children. She claims the juvenile court erred in finding she failed to correct the circumstances which led to the children's adjudication, the children could not be returned to her custody without suffering adjudicatory harm, services would not correct the conditions within a reasonable time, and reasonable efforts were made to maintain family unity. We affirm.

I. CINA Background.

Teresa and Terry are the parents of Savannah, born in 1987, Cassandra, born in 1988, Eric, born in 1992, and Breanna, born in 1997. In August of 1998, DHS received a founded concern regarding the unsafe and unsanitary housing in which the children lived. Family preservation services were started. DHS petitioned in September to have all four children adjudicated in need of assistance. In December of 1998, the children were adjudicated in need of assistance by stipulation of the parents on the grounds in Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(g) (1997). The juvenile court found Terry had sexually and physically abused the children and ordered contacts between Terry and the children should be supervised. Initially the children remained in Teresa's care. Teresa and the children lived for a time in a shelter, having been evicted from their dwelling in October of 1998 because of its squalid condition. Teresa voluntarily placed Eric in foster care in December because his behavior caused the shelter to warn Teresa the family would have to leave if Eric stayed. In January of 1999, custody of Savannah, Cassandra, and Breanna was

transferred to DHS for placement in family foster care because Teresa allowed Terry to have unsupervised visitation with the children in violation of the prior dispositional order.

The case permanency plans of January and February of 1999 called for Teresa to follow through with recommendations for psychological treatment; to utilize services to deal with stress and housekeeping/organizational issues; to utilize non-physical discipline; to obtain employment; and to obtain housing to provide a safe, nurturing environment for the children.

At a hearing in March of 1999, Teresa agreed the children should remain in foster care. She could not provide a stable home at that time. She was working full time and had applied for housing. Case workers were concerned with Teresa's ability to manage and supervise the children during visitation.

After the review hearing in July of 1999, the court found the case permanency plan identified the needs of the family and constituted "a reasonable effort to resolve the adjudicatory harm in the least restrictive means available." The court ordered Teresa to participate successfully in domestic violence counseling and to visit the children regularly. By this time Teresa had obtained housing and Terry had moved back in with her. Teresa was reported to be cooperative with services, but showed little progress in improving her parenting skills. She was unable to supervise all four children during visitation.

In January of 2000, the court reviewed the disposition of the children and determined they should remain in foster care. Teresa was participating in the services offered but had a difficult time following through with the skills she was

taught. She and Terry did not yet have housing appropriate for the children. After Terry struck Savannah during visitation, Teresa had him leave the home. Because she did not report the abuse, visitation was moved out of the home and decreased to weekly. At times, workers had to intervene during visitation to avoid harm to the children because Teresa was unable to supervise all four children.

After a permanency hearing in March of 2000, the court directed the guardian ad litem to file a petition to terminate parental rights. The petition was filed in April of 2000. It alleged termination was appropriate under Iowa Code sections 232.116(1)(a), (c), (e), (f), (g) and (h) (1999).¹ The hearing on the

¹ These sections provide for termination of parental rights on the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

e. The court finds 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 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.

f. The court finds that all of the following have occurred:

petition was held in June. The court issued its order terminating the parental rights of both Teresa and Terry to Savannah, Cassandra, Eric and Breanna on September 5, 2000, under Iowa Code sections 232.116(1)(c), (e), (g) and (h). Teresa appealed. The termination of Terry's parental rights is not at issue in this appeal.

II. Claims on appeal.

On appeal, Teresa claims the court erred in finding: (1) she failed to correct the circumstances which led to the children's adjudication; (2) the children

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

h. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

could not be returned to her custody without suffering adjudicatory harm; (3) services would not correct the conditions within a reasonable time; and (4) reasonable efforts were made to maintain family unity.

III. Discussion.

A. Continued adjudicatory circumstances – 232.116(1)(c).

The children were adjudicated in need of assistance under Iowa Code sections 232.2(6)(b), (6)(c)(2) and (6)(g).² These sections encompass physical abuse and/or neglect; failure to supervise; and failure to provide adequate food, clothing, or shelter to the children. Teresa claims there was not sufficient evidence presented to prove the circumstances which led to the children's adjudication continue to exist despite the offer or receipt of services. She argues Eric's removal was her voluntary choice; the removal of the girls occurred because she gave Terry unsupervised contact and was unrelated to any services offered or her participation in them. She also asserts she participated in services and complied for the most part. She complains DHS did not attempt to help her supervise the children by separating them for visitation to make it easier for her.

² These sections define a child in need of assistance as one:

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

g. Whose parent, guardian, or custodian 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.

At the time of the termination, Teresa still struggled with the domestic abuse issues in her relationship with Terry. He was a disruption in her life and also a confirmed physical and sexual abuser of the children. She was unable to keep him out of her life or protect the children from him. Teresa did comply with services, but did not evidence any real ability to integrate the skills demonstrated and taught to her into her interaction with the children. Offer and receipt of services is insufficient; change must occur. She also continued to be unable to handle all four children for even two hours at a time during supervised visitation. Her complaint that DHS did not divide the children up for visitation is without merit. If she cannot deal with all four children during two hours of visitation, they would be at risk if returned to her care and custody full time. She also admits the small apartment she has is not adequate for the children, but places the blame on DHS for not assisting her in obtaining adequate housing. The evidence supports termination on this ground.

B. Children cannot be returned safely – 232.116(1)(e) & (g).

Teresa asserts there is not clear and convincing evidence some adjudicatory harm would occur if the children were returned to her care. She claims the children would be safe because it was Terry who was the abuser and she had separated from him and was planning to divorce him. The circumstances remain, however, that Teresa is unable to provide adequate supervision or appropriate discipline even during a two-hour visitation period weekly. Termination need not wait until harm has actually occurred. The

children would be at risk if returned to her care. The evidence supports termination on these grounds.

C. Services correcting the problems – 232.116(1)(h).

In addition to the arguments made above, Teresa claims with some family counseling and help in obtaining housing, the children could be returned in a reasonable time. Teresa had received services for nearly two years at the time of the termination hearing. The case workers testified she was compliant with services, but apparently unable to improve her skills or implement what she was taught sufficiently to correct the circumstances which prevent the children from being returned. More than the statutory time has passed. The evidence supports termination on this ground.

D. Reasonable efforts – 232.102(7).

Finally, Teresa claims DHS did not make reasonable efforts to return the children to her care. She alleges she requested family counseling but did not receive it, the supervised visitation was not conducive to reunification, and DHS did not provide her with necessary assistance in obtaining suitable housing. She argues DHS "could have made a greater effort to reunify and maintain family unity." The issue is not whether something more could have been done, but rather whether reasonable efforts were made. It appears Teresa may have had trouble obtaining adequate subsidized housing because the children were not currently in her care and DHS could not specify when they would be returned to her. Teresa does not explain how providing the requested family group counseling would have enabled family reunification. Her inability to manage all

four children together would remain. She received homemaker services, parent skill development, psychological counseling, and domestic abuse counseling. The court correctly determined DHS made reasonable efforts to reunite the family.

IV. Conclusion.

Clear and convincing evidence supports termination on any and all of the grounds cited by the court. Two years of services and support did not alleviate the problems that placed the children at risk. Accordingly, we affirm the decision of the district court to terminate Teresa's parental rights.

AFFIRMED.