

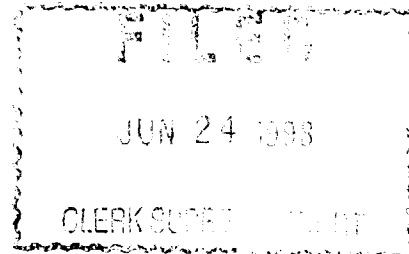
IN THE COURT OF APPEALS OF IOWA

No. 8-251 / 97-2248

Filed June 24, 1998

IN THE INTEREST OF S.M., K.M., III, and L.P.,
Minor Children,

K.F.M.S., Mother,
Appellant.



Appeal from the Iowa District Court for Shelby County, Kathleen A. Kilnoski,
District Associate Judge.

The mother of three minor children appeals a district court ruling terminating
her parental rights. **AFFIRMED.**

Jeffrey J. Theulen of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for
appellant.

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

William T. Early of the Kohorst Law Firm, Harlan, guardian ad litem for minor
children.

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

HUITINK, J.

Kristin is the mother of Shannan, born in July 1985, Kenneth, born in June 1987, and Lucas, born in April 1990. Kristin was previously married to Ken, the father of Shannan and Lucas. Michael is the father of Lucas.

The children came to the attention of the Department of Human Services (DHS) in December 1992, following a referral from school regarding Kenneth. Kenneth has encopresis, which is a bowel problem. Kristin believed Kenneth's problems were the result of a bad attitude, and not a medical problem.

In February 1993, DHS issued a founded report of denial of critical care due to accumulated dog feces in the home. Kristin received family-centered services and homemaker services. In April 1993, Kristin refused further homemaker services, stating she knew how she liked her home. Kristin kept three dogs in the home and allowed them to defecate on the floor. In June 1993, DHS issued a second founded report of denial of critical care. The entire kitchen floor was covered in feces. Human and dog excrement was found throughout the house.

On June 25, 1993, the children were placed in foster care. Family-centered services were terminated in July 1993 due to Kristin's belligerent attitude. The children were adjudicated to be children in need of assistance pursuant to Iowa Code section 232.2(6)(g). Kristin was ordered to obtain a substance abuse, psychiatric, and psychological examinations. She was also ordered to receive family-centered services.

In August 1993, Kristin moved to a duplex. She began to receive family-centered services again. The children were returned to her care on August 25, 1993. Kristin obtained a psychological examination, which showed she had a paranoid personality disorder. The psychologist found Kristin's personality pattern was not likely to change much over time. A substance abuse evaluation showed no need for treatment.

The condition of Kristin's home began to deteriorate in October 1993. Kristin was not cooperative with family-centered services. She showed no improvement in parenting skills. Kristin received homemaker services from November 1994 until February 1995, but the condition of the home did not improve. The children had problems with school attendance and hygiene.

On April 12, 1995, the children were placed in foster care. The children were diagnosed with oppositional defiant disorder and they began individual therapy. The children had behavioral problems after visits, and in August 1995, the visits ceased. The behavior of the children then improved.

Kristin obtained new psychiatric and psychological examinations which showed she had an adjustment disorder. In September 1995, the juvenile court determined Kristin should stay under the care of her psychiatrist, Dr. John Fernandez, and cooperate with DHS in order to receive supervised visitation.

Kristin married Melvin, a man the children did not know. Kristin did not attend appointments with Dr. Fernandez, but was allowed a visit with the children on

Christmas Day 1995. Kristin was inappropriate during the visit and told the children not to obey the foster parents. Kristin had another visit with the children on June 3, 1996.

In June 1996, Kristin moved to a town 200 miles away from the children. She had no further visits with the children. She sent them Christmas presents in 1996, and sent two of the children birthday cards.

In July 1997, the State filed a petition for termination of parental rights. The juvenile court found Kristin displayed little, if any, insight into the emotional and physical needs of her children. The court terminated Kristin's parental rights pursuant to section 232.116(1)(e). The parental rights of Ken were also terminated. The parental rights of Michael were not terminated, and he is considered a potential placement for Lucas. Kristin 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 child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. On the morning of the termination hearing, September 11, 1997, Kristin's attorney filed a motion for continuance. Kristin had not contacted her attorney since July 9, 1997, and he felt unable to fully prepare a defense. Kristin believes she was severely disadvantaged because she was unable to present any

witnesses. She claims the juvenile court abused its discretion by denying her motion for continuance.

An appellate court reviews a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). The court will reverse only if injustice will result to the party desiring the continuance. *Id.* In order to show an abuse of discretion, the party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987).

We determine the juvenile court did not abuse its discretion in denying Kristin's motion for continuance. It was Kristin's choice not to contact her attorney and work with him to prepare a defense. She should not now complain she was prejudiced by her own actions.

III. Kristin asserts the State did not engage in reasonable efforts to reunite her with the children. She claims the State impaired her ability to maintain significant contact with the children by denying her the opportunity for visitation.

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). Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The reasonable efforts concept would broadly include a visitation arrangement designed

to facilitate reunification while protecting the children from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996).

We find DHS did make reasonable efforts to reunite Kristin with the children. The nature and extent of visitation is controlled by the best interests of the children. *Id.* Due to the children's behavioral difficulties after visitation and Kristin's lack of insight into their problems, DHS reasonably limited visitation until Kristin came under the care of a psychiatrist. Kristin chose not to attend appointments with the psychiatrist.

IV. Kristin contends the State did not provide reasonable services to reunite her with the children. She believes DHS should have provided more services to correct her parenting deficiencies.

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 found no evidence Kristin requested additional services prior to the termination hearing. Thus, we conclude she has not preserved this issue for our review.

We affirm the decision of the juvenile court terminating Kristin's parental rights.

AFFIRMED.