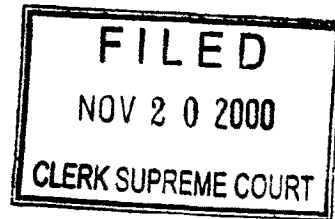


IN THE COURT OF APPEALS OF IOWA

No. 0-522 / 99-2017
Filed November 20, 2000

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



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

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

Kevin E. Schoeberl of Story, Schoeberl & Kowalke Law Firm, Cresco, for
appellant.

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

James P. Moriarty, Cresco, guardian ad litem for minor children.

Heard by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

Mother appeals from the order terminating her parental rights to her two children. She contends the State did not make reasonable efforts to make possible the return of the children to her home, the State presented no clear and convincing evidence returning custody to her would subject the children to adjudicatory harm as defined in Iowa Code section 232.2(6), and the best interests of the children mandate her parental rights not be terminated. We affirm.

The children in interest, C.F. and S.F. were ages eleven and five, respectively, at the time of the termination hearing. The children's fathers are deceased. At that time of the hearing, the children were residing with their maternal aunt and her husband.

Between September 1995 and February 1996, the Department of Human Services (DHS) issued three founded child abuse reports for denial of critical care for failure to provide proper supervision. One report indicated C.F. would not return home until 6:00 or 7:00 p.m. Mother assumed C.F. was at a friend's house, so she was not concerned with his late returns. C.F.'s whereabouts were unknown for seven hours one day. On one occasion, mother left S.F., two years old at the time, alone in the home with no babysitter for four hours. The reports indicate no physical injuries to the children occurred.

One investigator reported the mother's frequent mood changes during a visit, and noted the mother often slept late, leaving her children, ages two and seven at the time, to supervise themselves. Mother reported a history of

depression. One report expressed concern the mother was abusing alcohol and/or drugs. When offered services, the mother stated she did not trust counselors. The reports expressed concern the mother left rotten, moldy food within the children's reach, and twelve inches of dirty water in the bathtub. One report described the house as "totally turned upside down. There literally was not one spot on the floor in any part of the house that wasn't covered with debris." Mother refused homemaker services.

C.F. and S.F. were adjudicated children in need of assistance by order entered on February 23, 1996 in Greene County. C.F. was placed in the custody of his maternal grandmother, and S.F. was placed in the custody of her maternal aunt, Lisa, and her husband, Troy. On June 7, 1996, custody of C.F. was transferred to Lisa and Troy. The court ordered DHS to supervise the children's placement and provide services to the children and the mother as appropriate.

In September 1996, DHS issued a founded child abuse report for denial of critical care for S.F. by her mother. A worker from Lutheran Social Services arrived at the home to find S.F. alone covered with mascara and her mother in the back yard. S.F. was not injured.

A psychological evaluation of the mother in June 1996 resulted in a diagnosis of personality disorder not otherwise specified, with anti-social, borderline and narcissistic characteristics. Based on this diagnosis and the mother's overall testing results, the psychologist indicated potential parenting problems:

First, she is unlikely to ask for or solicit help for herself if she is not able to effectively parent her children independently. . . . Second,

... she will view her relationships with her children as positive as long as they meet and do not detract from her achievements. It is likely [the mother] will maintain her own interests as her top priority rather than putting her children's needs first. This is not to say that she does not love or care for her children, however. When things go well with her children, [the mother] will have some of her emotional needs met through caretaking them. When there are problems, she will distance herself from them in an emotional and physical sense.

Custody of the children was returned to mother on June 6, 1997, subject to continued supervision by DHS, family centered services, and individual counseling for the mother. Venue was transferred to Howard County on July 7, 1997, where the mother was residing with her fiancée. The relationship ended in late 1997. Mother and children moved into an apartment.

Child abuse reports in March and June 1998 were founded for denial of critical care. Mother's failure to provide supervision resulted in S.F. wandering off several times in a short period of time. C.F. displayed delinquent behavior, including setting fires in a neighbor's garage and basement, breaking windows in a local business, and chasing other children with a knife. The children were not injured as a result of their actions or their mother's lack of supervision.

On June 9, 1998, the court removed custody of C.F. and S.F. from their mother and placed custody with DHS for placement with Lisa and Troy. The court cited mother's lack of supervision and C.F.'s delinquent behavior, along with mother's failure to take her psychotropic medication and attend counseling as reasons for the removal. Mother did not contest placement of the children with Lisa and Troy. At a dispositional review hearing in January 1999, the court specified in order for the children to be returned home, mother must actively

participate in individual counseling and therapy, parent skill development, and family therapy. The court's order stated mother must "demonstrate her ability to show stability in her own mental condition and her ability to provide appropriate care and supervision for her children."

DHS and other agencies provided services to the family beginning in 1996. A mental health counselor met with the mother bi-weekly for individual counseling from approximately July 1996 until January 1999. The mother participated intermittently in these sessions, often breaking appointments or arriving late. The counselor terminated services with the mother in January 1999 due to her lack of compliance. Mother missed several visits with the children due to her failure to make a required phone call to arrange for the visits and/or her failure to attend therapy sessions. She missed scheduled appointments with caseworkers. She stopped taking medication prescribed for depression when DHS funding for the medication ran out, and refused to begin taking it again after DHS reinstated the funding. She indicated to one caseworker after the termination hearing she would no longer be participating in therapy because she wanted nothing more to do with the agency or the system.

The children adjusted well to their placement with Lisa and Troy. As the juvenile court noted:

There is no question that the children's behavior and [C.F.'s] academic work has improved dramatically since [being] placed with [Lisa and Troy]. For the second quarter of the 1998-1999 school year, [C.F.] received 3 – A's and 2 – B's. For the first half of the fourth quarter his grades were 3 – A's, 2 – B's, and 1 – C. He had perfect attendance for the second quarter. His behavior improved dramatically at home and at school.

C.F. very strongly told Lisa and Troy he wanted to live with them. S.F. wanted to call Lisa "mommy" the first time she lived with Lisa and Troy. Until recently, Lisa had not allowed S.F. to use the term. S.F. has lived with Lisa and Troy for three of her five years. Lisa and Troy indicated a willingness to adopt the children if the mother's parental rights were terminated. They indicated they would allow the children to see their mother, as long as it was a healthy and safe environment and relationship.

A permanency staffing was held on January 26, 1999. On July 29, 1999, the State filed a petition for termination of parental rights. The court terminated the mother's parental rights on November 12, 1999, pursuant to Iowa Code section 232.116(1)(e) (1999). The court cited mother's unstable and unimproved mental health, along with her failure to maintain stable employment and related financial problems. The court determined the mother has not demonstrated the ability to provide the long-term structure and stability needed by her children to develop normally, and the best interests of the children would be served by termination. Mother appeals.

Standard of Review. We review termination proceedings de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. 14(f)(7); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993).

Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Termination Pursuant to Iowa Code section 232.116(1)(e). Iowa Code section 232.116(1)(e) provides for termination of parental rights where:

- (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.

Iowa Code § 232.116(1)(e).

Mother concedes the first two elements of section 232.116(1)(e) are met. She concedes the third element is met, but contends the State did not provide "reasonable efforts" to preserve and make it possible for the children to safely return to the family home. Specifically, the mother points to the State's failure to make arrangements for a trial period placement of the children with their mother for a period of thirty days or more. The mother also contends the State failed to meet its burden of proof under section 232.116(1)(e)(4).

The State must make reasonable efforts to reunite parents and children prior to termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The State had the obligation to make reasonable efforts, but it is the 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). A parent's challenge to services should be made when they are offered, not when

termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa App. 1994).

Mother did not complain about problems with visitation that arose after the January 1999 dispositional hearing until the time of the permanency hearing. Her challenge to services comes too late. Even if she had raised the issue in a timely manner, the record demonstrates the mother had the children in her custody for approximately one year between their first and second removals from her home. DHS and other agency services were provided to the mother for over three years. Mother never complained about the services provided or asked additional services be provided. To the contrary, she did not take advantage of the services DHS offered her, and failed to progress.

The requirement of Iowa Code section 232.116(1)(e)(4) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for the termination. *Id.*

The juvenile court concluded there existed clear and convincing evidence to return custody of the children to their mother would subject them to adjudicatory harm as defined in Iowa Code sections 232.2(6)(b), (c)(2), (g), and (n). We agree with the juvenile court's determination. The record demonstrates there have been many attempts to provide counseling and rehabilitation to this mother. However, she has failed to benefit from them. *See In re A.R.S.*, 480

N.W.2d 888, 891 (Iowa 1992). When a parent is incapable of changing to allow the child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa App. 1995). Some progress is not enough. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). As the juvenile court explained:

The children's mother refuses to accept the possible reality that her parental rights could be terminated. She irrationally claims that she will be motivated to change following the termination hearing but has been unable to do so prior thereto. . . . The children's mother refuses to accept responsibility for the placement of her children with relatives outside her home. She instead externalizes blame to the children, the department, and the system. She is unwilling to accept that she may have made past mistakes in parenting and supervising her children and thus is unable to learn from those mistakes and parent appropriately now. . . . She fails to see how her emotional instability and mental condition result in failure to properly supervise her children. . . . The history of lack of progress in mental health counseling translates into a belief that continued efforts at reunification reflect only a very faint hint of possible success at the cost of failing to timely establish permanency for the children.

In addition, the children's mother has failed to demonstrate the ability to maintain stable employment or provide for her own financial needs.

Best Interests of the Children. Even if the statutory requirements for termination are met, the decision to terminate still must be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In assessing the best interest of the child, we evaluate the child's long-range as well as immediate interests. *Id.* We must consider what the future likely holds for the child if returned to his or her parents. *Id.* We gain insight into the child's future prospects by reviewing evidence of the parent's past performance – for it may be indicative of the parent's future capabilities. *Id.*

“Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). 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 App. 1993). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *D.A.*, 506 N.W.2d at 479 (quoting *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987)). At some point, the rights and needs of the children rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

The court need not terminate parental rights when the child is placed in the legal custody of a relative, the child is over ten years old and objects to the termination, or the termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(a)-(c). Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993). It is within the sound discretion of the court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). Generally, once the grounds for termination of parental rights have been shown, termination is in the best interests of the child. *In re L.M.F.*, 490 N.W. 2d 66, 68 (Iowa App. 1992).

The trial court considered the entry of a permanency order in lieu of termination due to the children's placement with relatives and strong attachment to their mother. The court, however, concluded:

Statements by the children's mother, however, that she does not believe a termination likely and once the decision is made in this matter that she will actively involve herself in rehabilitation, leave the court with the belief that the entry of a permanency order will be anything but permanent. Instead, the children's mother will continue to attempt to regain the children's custody. She has proven over the last four years that she cannot sustain her mental functioning at a level necessary to be a full-time parent with negative consequences to the children. Fortunately in this case, even with a termination of parental rights, the children will be able to have continued contact and association with their mother as the maternal aunt and uncle plan to adopt the children and will allow visitation. Thus the best interests of the child[ren] in interest would be served by termination and adoption and not merely by the entry of a permanency order for relative placement.

We agree with the trial court. These children have spent years wondering where they will spend the next school year, and planning activities around visitations and family therapy. S.F. has lived three of her five years with her aunt and uncle. C.F., eleven at the time of the termination hearing, told his aunt and uncle he wanted to live with them. The children see their aunt and uncle in a parental role. The children have found a place where they belong and deserve the chance to identify with a family unit. The stability necessary in the lives of these children cannot be achieved through a permanency order.

AFFIRMED.