

IN THE COURT OF APPEALS OF IOWA

No. 4-090 / 93-1679

FILED

APR 26 1994

CLERK SUPREME COURT

IN THE INTEREST OF J.M., A Child,
C.M., Mother,
Appellant.

Appeal from the Iowa District Court for Delaware
County, Jane Mylrea, Associate Juvenile Court Judge.

The natural mother appeals the termination of her
parental rights to a minor child. **AFFIRMED.**

William A. Lansing of Lansing Law Office, Dyersville,
for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Judy Sheirbon,
Assistant Attorney General, and Lou Walker, County
Attorney, for appellee-State.

Mark Roeder of Roeder Law Firm, Manchester, guardian ad
litem for minor child.

Considered by Donielson, C.J., and Hayden and Sackett,
JJ.

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HAYDEN, J.

Cindy is the natural mother of four minor children: Stephanie, born December 10, 1977; Brandon, born September 5, 1981; Stephen, born October 7, 1982, and Jeremy, born February 27, 1987. Cindy appeals the termination of her parental rights to Jeremy.

The Iowa Department of Human Services (DHS) has been providing services to Cindy since 1984 to help her deal with her failure to follow through with medical treatment for her children, poor parenting practices, safety hazards and unsanitary conditions in the home, inability to provide adequate food and clothing for the children at times, and inability to provide stable and appropriate housing.

In February 1989 all four children were removed from Cindy's custody and placed in foster care. In May 1989 all parties stipulated to three of the children, including Jeremy, being children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). In 1984 the three older children had been adjudicated in need of assistance. Stephen had also been adjudicated in need of assistance in May 1988. The adjudication followed numerous reports of child neglect, which centered upon Cindy's failure to follow through with medical treatment for Stephen's chronic ear infection. The severe infection caused the child's eardrum to rupture.

In 1990 Jeremy was diagnosed with attention deficit hyperactive disorder (AD/HD). He also had a tremor in his

hands and speech problems requiring therapy. He had a history of chronic ear infections and bronchitis. The mother was given reading materials about coping with AD/HD and was shown a video on the disorder.

By August 1992 Jeremy was having full-day visits, which were half supervised, with the mother. However, prior to beginning overnight visits, a caseworker reported a known sexual perpetrator was living in the mother's home. This living arrangement followed an incident in which the son of Cindy's previous live-in boyfriend sexually abused Jeremy's sister, Stephanie. Stephanie was later admitted to the hospital after she slit one of her wrists. Supervised visitation was ordered. At a November 16, 1992, permanency hearing the court ordered a petition for termination of rights to Jeremy be filed.

In September 1993 Jeremy's appointed counsel, Mark Roeder, filed a motion to dismiss, contending Jeremy had not been personally served with an original notice and copy of the petition for termination. The mother joined in this motion to dismiss. On September 20, 1993, the juvenile court denied the motion to dismiss, finding "the juvenile has at all times in both the Child in Need of Assistance proceedings and termination of parental rights proceedings been represented by counsel serving as attorney and guardian ad litem."

A petition for termination was filed, and hearings were held in August, September, and October. The juvenile court

found the mother had borderline intellectual functioning, paranoid personality disorder, poor judgment, and a minimal bond with Jeremy. The court concluded that despite receiving various services, the mother had made virtually no improvement in her parenting abilities and Jeremy would be at risk if returned to the mother's care. The court terminated the mother's parental rights to Jeremy pursuant to Iowa Code section 232.116(1)(e) (1993). The mother appeals.

Our review of a termination of parental rights proceeding is de novo. Iowa R. App. P. 4; In re T.A.L., 505 N.W.2d 480, 482 (Iowa 1993) (citations omitted). We give weight to the fact findings of the juvenile court, especially with respect to the credibility of witnesses. In re D.A., Jr., 506 N.W.2d 478, 479 (Iowa App. 1993) (citation omitted). We, however, are not bound by these fact findings. Id.

I. Notice. Cindy contends the juvenile court lacked personal jurisdiction over Jeremy because he was not personally served with notice of the termination petition. Cindy cites the following code sections in support of her contention. Iowa Code section 232.112 provides:

1. Persons listed in section 232.111, subsection 3 shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines to be unknown and cannot be ascertained by reasonably diligent search.

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Iowa Code § 232.112(1) (1993). In specifying the persons to be included in a petition for termination section 232.111(3) lists the following:

3. A petition for termination of parental rights shall include the following:
 - a. The legal name, age, and domicile, in any, of the child.
 - b. The names, residences, and domicile of any:
 - (1) Living parents of the child.
 - (2) Guardian of the child.
 - (3) Custodian of the child.
 - (4) Guardian ad litem of the child.
 - (5) Petitioner.
 - (6) Person standing in the place of the parents of the child.

Iowa Code § 232.111(3)(a)-(b) (1993). Guardian ad litem in the context of termination proceedings is defined as "a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party" Iowa Code § 232.2(22) (1993). Iowa Code section 232.112(2) provides for a guardian ad litem prior to the service of notice:

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a child if the child does not have a guardian or guardian ad litem or if the interests of the guardian or guardian ad litem conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection [232.112]1.

Iowa Code § 232.112(2) (1993).

The record reveals Jeremy had four attorneys appointed to represent him at different periods throughout the CINA and termination proceedings. Pursuant to a court order filed on October 25, 1991, the public defender's officer

was appointed as counsel for the child. At the time the termination petition was filed and served in March 1993, the public defender's office was representing Jeremy. In July 1993 attorney Mark Roeder was appointed to represent Jeremy.

Cindy challenges only the personal notice to Jeremy, not to his guardian ad litem. Jeremy's attorney and guardian ad litem were the same individual at the time the petition of termination was served. Pursuant to the juvenile court's September 20, 1993, order Jeremy's attorney and DHS filed acceptances of service acknowledging receipt of the petition for termination of parental rights.

The juvenile court had proper jurisdiction to terminate the mother's parental rights. We affirm on this issue.

II. Clear and Convincing Evidence. The State filed a petition for termination of parental rights pursuant to Iowa Code section 232.116(1)(e), 232.116(1)(d), and 232.116(1)(b) (1991). On appeal Cindy claims there is a lack of clear and convincing evidence Jeremy cannot be returned to her care.

At the time of the termination hearing Jeremy had been removed from Cindy's custody for over four and one-half years. Several caseworkers who have been involved with this family testified at the termination hearing. Margaret Carlson, a social worker with DHS, testified regarding problems the family had experienced and services which were offered. The State questioned Carlson on the probability of Jeremy returning to Cindy's custody:

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Q. Could you comment upon, based upon your knowledge of the case, could you give us a realistic assessment of the likelihood of Jeremy being returned to Cindy's in the future? A. I don't see that that is a likelihood.

Q. Why is that? A. I think because of Jeremy's special needs, I think because of the history of the abuse reports and supervision issues related to Jeremy and his siblings. I think to Jeremy, because of Jeremy's age and the fact that he is not able to take care of himself, and Cindy is demonstrating some stress just dealing with Brandon [who is residing at home], who does not have special needs, I don't see that Cindy would be able to respond to Jeremy and provide for his basic and special needs.

Q. You mentioned the abuse reports. Why did you mention the abuse reports? A. There was a series of abuse reports regarding Jeremy, I believe there's four or five, and those were concerns about supervision, safety, and I think because of his age, that those are still risk factors, as well as his behavior.

As attorney and guardian ad litem for the child, Roeder filed a report to the juvenile court on October 11, 1993. He admitted "[i]t appears improbable that Jeremy could ever be returned to his natural mother despite the improvements she has made since Jeremy was removed." He recommended Cindy's parental rights be terminated but Jeremy be allowed to have some contact with his natural family. Counsel noted Cindy had problems in the past with administering medication to her children. Jeremy is required to take medication for his behavioral problems. This situation is especially dangerous in light of the child's special needs. Counsel also noted Jeremy would demand much attention and structure. He stated "[i]t is highly improbable Cindy could provide the structure Jeremy needs

given her lower functioning level, and her past inability to medicate Jeremy and Stephen for their chronic ear infections, and her lack of judgment pertaining to the needs of her children."

A parent's past performance may be indicative of the quality of future the parent may provide for the child. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992) (citing In re L.L., 459 N.W.2d 489, 493-94 (Iowa 1990)). Despite years of numerous services which began in 1984 Cindy has been unable to develop appropriate parenting skills to care for the special needs of Jeremy. Clear and convincing evidence supports the termination of Cindy's parental rights to Jeremy. We affirm on this issue.

III. Reasonable efforts. DHS must make reasonable efforts to reunite the family and provide services. Iowa Code § 232.102(5) (1993). Cindy argues DHS did not make a reasonable effort to provide her with sufficient training to parent an AD/HD child.

Services provided to this family since 1984 include: Families of Northeast Iowa (FNEI) services, homemaker services, day care services, family preservation project, family centered services, vocational rehabilitation training, Cedar Centre psychiatric group, counseling and assessments, psychological evaluations, and AFDC benefits. Several of these programs focused on parenting skills development. In a 1988 case permanency plan assessment the caseworker reported Cindy continued to fall back to her old

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ways and noted every service available had been tried with no long-term success. The record also reveals examples of Cindy's resistance to some services and absence from others.

DHS also provided services to Cindy in an attempt to teach her how to deal with a AD/HD child such as Jeremy. Michael Hutchins, a social worker with LSS, brought written materials and a videotape on AD/HD to Cindy. Cindy testified Hutchins discussed the materials with her after she had read and viewed them and instructed her on how to use the information in dealing with Jeremy.

The record shows Cindy fails to recognize the need to adapt and develop skills so she can adequately deal with Jeremy's condition. Caseworkers reported Cindy denied the seriousness of Jeremy's needs. Cindy has received numerous services to develop and improve her basic parenting skills. She, however, refuses to implement what she has learned with regard to even basic parenting skills. Cindy has established a pattern in which she has failed to recognize the problems identified by DHS.

Reasonable efforts and services have been provided to this family in an attempt to reunify them. We affirm the juvenile court's order terminating Cindy's parental rights to Jeremy.

Costs of this appeal are assessed to Cindy.

AFFIRMED.

Donielson, C.J., concurs; Sackett, J., concurs specially without opinion.