

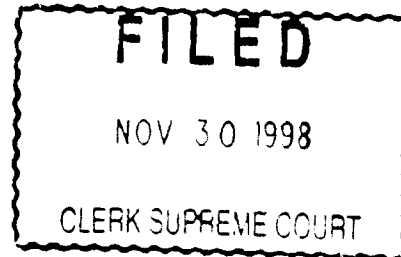
IN THE COURT OF APPEALS OF IOWA

No. 8-438 / 98-0096

IN THE INTEREST OF
A.N. and K.N., Minor Children,

L.N., Mother,

Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Gerald Magee,
Associate Juvenile Judge.

Mother appeals the juvenile court's order terminating her parental rights over
two minor children. **AFFIRMED.**

F. David Eastman of the Eastman Law Office, L.L.C., Clear Lake, for
appellant.

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

Mark Young, Mason City, guardian ad litem for minor children.

Considered by Sackett, C.J., and Huitink and Vogel, JJ.

PER CURIAM.

Linda, the mother of Ashley, born in May of 1994, and Katrina, born in May of 1995, appeals following a juvenile court order terminating her parental rights to the two children. The sole issue on appeal is whether the State's goal of family reunification and termination of parental rights denied Linda due process. We affirm.

A temporary order removed Ashley and Katrina from their mother's care in October 1996. Following a January 1997 hearing, the juvenile court found the children in need of assistance as defined under Iowa Code sections 232.2(6)(b)¹ and 232.2(6)(c)(2).²

Linda was allowed supervised visitation with the children. She also received family therapy, education in caring for the children, and counseling. It is reported Linda made little progress in developing better skills. She was criticized for failing to more carefully supervise the children and allowing them to have their way after they made a fuss.

¹ This section defines 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.

Iowa Code § 232.2(6)(b).

² This section defines a child in need of assistance as one who is "imminently likely to suffer the harmful effects as a result of . . ."

(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.

Iowa Code § 232.2(6)(c)(2).

After a review hearing in July of 1997, the court ordered the Department of Human Services to continue both the foster placement of Ashley and Katrina and Linda's visitation. The Department was also ordered to supply additional services. At the same time, the court directed the State to file a petition seeking termination of Linda's parental rights.

A petition to terminate parental rights was filed in September of 1997. Following an October hearing, the juvenile court found the State proved grounds for termination existed under Iowa Code sections 232.116(1)(d), (g), and (h). The court found Linda had made minimal progress in her own life and had made no progress in providing a home for these children or resuming a position of importance in their lives. The juvenile court further found the Department of Human Services had made reasonable efforts to reunify the family. The court specifically found concurrent planning for reunification and termination was appropriate for the needs of the children.

Linda basically claims the concurrent planning for reunification and termination violated her due process rights. The State responds the failure of reunification efforts was because of Linda's actions, not because of concurrent planning.

A parent's interest in maintaining the integrity of his or her family unit is protected by the due process clause of the United States and Iowa constitutions. *Alsager v. Iowa Dist. Court*, 406 F. Supp. 10, 22 (S.D. Iowa 1975). State intervention to terminate the parent-child relationship must be accomplished by meeting the

requisites of the due process clause. *See Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). The State has an interest in protecting the health, safety, and welfare of the children within its borders. *See Stanley v. Illinois*, 405 U.S. 645, 652, 92 S. Ct. 1208, 1213, 31 L. Ed. 2d 551, 559 (1972); *In re A.T.*, 433 N.W.2d 64, 66 (Iowa 1988). A parent's interest in maintaining the family unit is not absolute and may be forfeited by certain parental conduct. *See id.*; *see also In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986) (citing *In re Wall*, 295 N.W.2d 455, 457 (Iowa 1980)).

Due process requires fundamental fairness in judicial proceedings. *In re J.S.*, 470 N.W.2d 48, 52 (Iowa App. 1991). Where a parent receives notice of the petition and hearing, is represented by counsel, and the parent appears at the hearing where he or she is able to present evidence and cross-examine witnesses, the parent is not deprived of fundamental fairness. *See id.* Linda's due process rights were not violated.

Yet, to terminate parental rights, a court must find the family was afforded services and those services failed. Becky Heilskov, a social worker for the Department of Human Services with a master's degree in social work from the University of Iowa, testified at the hearing concerning the actions taken between the July 30, 1997 hearing and the October termination hearing:

- Q. Do you think two hours [visitation] a week is enough?
 A. No, I don't think two hours a week is enough to maintain sufficient contact, but a lot of that has to do with Linda's progress.

Q. What is the problem with scheduling more than two hours a week for supervised visits? A. At that time the permanency goal that the Department was looking at after a permanency staffing was held was termination of parental rights and not family reunification so it was not seen as the goal to be providing more visitation.

Q. Well, are you telling me then that when the hearing where there was some decision made to terminate parental rights occurred, at that point DHS just took the position we're not going to try anymore?

A. When DHS was recommending for a termination of parental rights, then I am recommending a change in a permanency goal to be that of achieving adoption versus family reunification so our goal was not to look at increasing visitation.

Q. So at that point basically, even though this court today sits here trying to decide if termination should occur -- you decided you were going to cut off any opportunity for her to reunite with her kids back on July 30th of this year? A. I don't know if you could say exactly July 30th, but what DHS has been instructed to do is what's called concurrent planning, and that means working on two goals and two objectives concurrently so that kids do not wait in limbo for a permanency plan to be implemented for them. So while family reunification was being worked on and that was still DHS's obligation per se to provide visitation and opportunities and services for Linda, we were also looking at an alternative plan to meet the best interests of Ashley and Katrina, which in DHS's opinion was termination.

Q. If you're still after July 30th saying, well, we're going to work toward reunification even though we're working toward termination at the same time, wouldn't it have made sense to increase the visits, especially during that period of time when things were going so well? A. Just lately you mean or between July 30 and today?

Q. No, between July 30th and when she lost her job I think on the 10th of October. A. Okay. I guess I don't see things as having gone all that well, especially in the months of like September and October for Linda.

Q. It has been testified that visitation between Linda and the children was set up in the recent past once per week, two hours per week on a supervised basis. Was consideration given to expanding that visitation to allow more contact or perhaps changing the visits to unsupervised and, if not, why not? A. Um, not in the recent past the visits have not been discussed to be expanded or lengthened because of the difficulties in maintaining contact with Linda, her refusing to do UAs, some of the concerns about her being arrested and her job stability,

There is a contradiction when the State petitions for termination of parental rights while the Department of Human Services offers the family services and provides parent-child visitation in an attempt to unify the family. Services were offered prior to the July 1997 hearing. Linda did not request additional services prior to that time. Linda should have challenged the services then. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993).

Linda has failed to show grounds for reversing the juvenile court. The order terminating her parental rights is affirmed.

AFFIRMED.