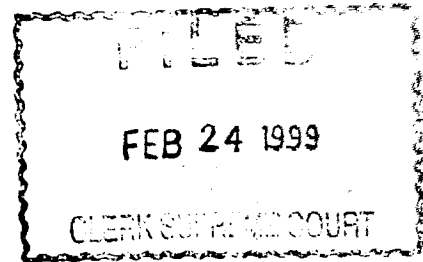


IN THE COURT OF APPEALS OF IOWA

No. 9-052 / 98-0633

IN THE INTEREST OF N.M., K.D., and T.R.,
Minor Children,

N.M., Mother,
Appellant.



Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Juvenile
Court Judge.

Mother appeals the termination of her parental rights with respect to three of
her four children. **AFFIRMED.**

Michael R. Stowers of Babich, McConnell & Renzo, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Daniel Hart, Assistant Attorney General,
and Cory McClure, Assistant County Attorney, for appellee.

Pam Vandel, Des Moines, guardian ad litem for minor children.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Nickie is the mother of Nickisha, born in January 1985; Kennisha, born in October 1987; TiShawn, born in August 1988; and Terrance, born in May 1990. The present action involves only Nickisha, Kennisha, and Terrance. Nickie appeals the termination of her parental rights to these children. We affirm on appeal.

The family first came to the attention of the Department of Human Services (DHS) in 1988 due to concerns about the mother's care of the children. DHS entered five founded reports of physical abuse of TiShawn by Nickie. In December 1993, Nickie was angry with TiShawn and placed her in extremely hot bath water, which caused third-degree burns on her feet and legs and second-degrees burn on her genitals. All of the children were removed from Nickie's care.

The children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2). Nickisha was placed with her father. Kennisha was placed with her paternal grandmother. Terrance was placed with a maternal great-aunt.

Nickie had a psychological evaluation in April 1994. She was diagnosed with depression and an avoidant personality disorder. The evaluation recommended individual therapy and assertiveness training to help her deal with her anger. In July 1994, Nickie pled guilty to willful injury, child endangerment, and neglect of a dependent person. These charges arose due to her physical abuse of TiShawn. Nickie was sentenced to a term of imprisonment not to exceed ten years.

In 1995, the juvenile court entered a permanency order placing Nickisha, Kennisha, and Terrance in long-term family placements. Nickie's parental rights to TiShawn were terminated. TiShawn has been adopted by her paternal grandparents.

A previous no-contact order between Nickie and the children was dropped in October 1995. Nickie sent letters to the children from prison. Nickisha had one visit with her mother. Kennisha did not wish to speak to her mother and had no visits. Terrance had several visits with Nickie in prison. While in prison, Nickie participated in parenting classes, anger management classes, grief therapy, and a seminar on domestic violence. She also completed her GED.

Nickie was released on probation in March 1997. After her release, Nickie did not participate in recommended individual therapy to address the issues which led to the abuse of TiShawn. A no-contact order was entered which prohibited any contact by Nickie with the children except for supervised visitation through DHS. Due to the advice of their therapist, Nickisha and Kennisha did not have any visitation with Nickie after she was released from prison. Terrance had two visits with Nickie.

The children have done well in their placements. Nickisha and Kennisha have attended individual and joint therapy. Nickisha was diagnosed with an overall anxious disorder and separation anxiety disorder. Kennisha has been diagnosed with separation anxiety disorder and post-traumatic stress disorder. Nickisha's father wishes to adopt her. Kennisha's paternal grandmother has expressed an interest in adopting Kennisha and Terrance.

In September 1997, the State filed a petition to terminate Nickie's parental rights to Nickisha, Kennisha, and Terrance. The juvenile court determined Nickie's parental rights should be terminated pursuant to sections 232.116(1)(c), (e), (f), and (i). The court noted Nickie had not shown appropriate interest in visiting the children and had not received needed therapy to protect the children from abuse. Nickie has 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 children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Nickie contends there is no evidence to show the children would be in danger if returned to her care. She admits TiShawn was singled out as the object of her abuse. She states there is no evidence to show the other children would be subject to physical abuse if they were returned to her care.

While the other children were not physically abused, they suffered emotional and mental abuse due to their exposure to the physical abuse of TiShawn. Nickisha and Kennisha have been in counseling since the time of the abuse to help them deal with their emotional problems. They clearly remember the abuse and fear their mother. They would be emotionally traumatized if returned to her care. In addition, the evidence shows Nickie has not participated in individual therapy to address the

issues which led to the abuse of TiShawn. Until these issues are addressed, the other children would be in danger of physical abuse.

III. In the alternative, Nickie asks to have only Terrance returned to her care. Since Terrance is the youngest, he is least affected by memories of the physical abuse of TiShawn. Also, Terrance has had the most consistent contact with Nickie since he was removed from her care.

As noted above, Nickie has not addressed the issues which led to the physical abuse of TiShawn. For this reason, Terrance would be in danger of abuse if returned to her care.

IV. Nickie points out that under section 232.116(3)(a), the juvenile court need not terminate parental rights because the children were placed with relatives. Nickisha is with her father, Kennisha is with her paternal grandmother, and Terrance is with his maternal great-aunt.

The factors in section 232.116(3) are permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). It is in the juvenile court's discretion to apply the factors in this section based on the unique circumstances of each case and the best interests of the children. *Id.* The juvenile court did not abuse its discretion in terminating parental rights under the facts of this case. The children suffered emotional harm when they were exposed to the mother's physical abuse of a sibling. They need the stability of a permanent home to help them address their emotional problems.

We affirm the decision of the juvenile court terminating Nickie's parental rights to Nickisha, Kennisha, and Terrance.

AFFIRMED.