

IN THE COURT OF APPEALS OF IOWA

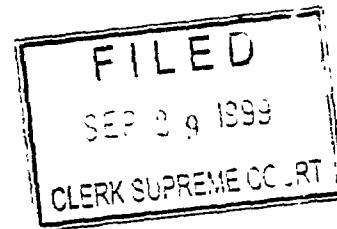
No. 1999-169 (9-386) / 98-1981

Filed September 29, 1999

**IN THE INTEREST OF K.M.C., K.F.C.,
K.J.C., and K.L.C., Minor Children,**

T.C. Mother,
Appellant,

L.C., Father,
Appellant.



Appeal from the Iowa District Court for Audubon County, Mark J. Eveloff,
District Associate Judge.

The mother of four minor children, and the father of minor child K.J.C., appeal
a district court order terminating their parental rights. **AFFIRMED ON BOTH
APPEALS.**

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

William T. Early of Kohorst Law Firm, Harlan, for appellant father.

Thomas J. Miller, Attorney General, Marne E. Woods, Assistant Attorney
General, and Francine O'Brien Anderson, County Attorney, for appellee State.

James M. Tinker of Madsen, Groteluschen & Tinker, Audubon, guardian ad
litem for minor children.

Considered by Sackett, C.J., and Mahan and Zimmer, JJ.

PER CURIAM

Terrie is the mother of Kassandra, born in May 1989; Kevin, born in April 1991; Kody, born in May 1992; and Kendra, born in October 1994. Lance is the father of Kendra. Terrie and Lance appeal the juvenile court decision terminating their parental rights. Terrie claims she should have been granted more visitation, she was not offered sufficient services, and her fear of Lance kept her from protecting the children. Lance claims his due process rights were violated because he was not permitted to be present at the termination hearing. We affirm.

In January 1994, the Iowa Department of Human Services issued a founded report of physical abuse against Lance for spanking Kevin and leaving a bruise. Terrie and Lance agreed to receive services. Lance admitted himself to a psychiatric hospital. Lance exhibited an explosive temper. He was placed on medication. Voluntary services ended in March 1994. Lance quit taking his medication in April 1994.

In May 1994, Kevin's leg was broken. An investigation left responsibility for the injury unresolved. The department issued a report finding the children were denied critical care because they were left unattended in a car.

In March 1995, Lance broke Kassandra's arm while disciplining her. Terrie first stated she did not know how Kassandra's arm was broken. Later, Terrie revealed Lance had been terrorizing the children at the time. Lance spanked the children and threatened them with a gun. He chased them across the yard with his truck. He

placed duct tape over the children's mouths. He held Kevin up to a wall and then let him drop to the floor. He held Kevin and Kody's hands above a lighter. If the children were screaming loud, Lance would put a sock in their mouths. Lance also called the children names. The children were afraid of Lance. Terrie knew of the abuse, but did nothing to stop it.

The department issued nine reports of physical abuse and seven reports of denial of critical care against Lance. Seven reports of physical abuse by omission and six reports of denial of critical care were issued against Terrie. In addition, there were two reports of denial of critical care against Lance and Terrie together. The children were placed in foster care on March 31, 1995. They were found to be children in need of assistance under Iowa Code sections 232.2(6)(b), (c)(1), and (e).

Lance was involuntarily committed to a mental health institute in April 1995. He was diagnosed as having an adjustment disorder and an antisocial personality disorder.

Lance pled guilty to two counts of child endangerment. He was sentenced to a term of imprisonment not to exceed ten years. Terrie pled guilty to one count of child endangerment and received a deferred sentence.

Kassandra, Kevin, and Kody have been diagnosed as having post-traumatic stress syndrome as a result of the abuse they suffered. Kassandra was also diagnosed as having psychosocial deprivation syndrome, also termed a failure to thrive. The condition was attributed to neglect and abuse in her home. After she was placed in

foster care she started to grow normally. Kassandra and Kevin have attention deficit hyperactivity disorder. They are on medication for this condition. Kody has an interaction/attachment disorder of infancy. Kendra had developmental delays. After she was placed in foster care her development was considered age appropriate.

Terrie cooperated in receiving services. She began therapy in April 1995. She went to a domestic abuse victims group from July to September 1995. In August 1995, Terrie had a parenting assessment. The assessment recommended Terrie needed long-term support, education, and therapy before she could provide the children a safe and positive family environment. Terrie attended parenting skill development sessions from December 1995 until November 1996.

In July 1996, the children's therapist recommended Terrie's visits with the children end because the children had behavioral difficulties. A visit in August and in September 1996 were observed by a psychologist. The psychologist noted the children displayed anger and were difficult to control. In December 1996, supervised visits were replaced by weekly family therapy sessions for Terrie and the children.

Family therapy was suspended in March 1997, because of concerns for the emotional stability of Kassandra, Kevin, and Kody. The children had temper tantrums, nightmares, and showed aggressive behavior. They continued to express fear of and distrust and anger toward Terrie. She was not able to understand the children's need for attention and support. Terrie made very little progress in developing a nurturing relationship with the children.

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In June 1997, Terrie had supervised visits once a month. She missed scheduled visits in February and March 1998. There were problems with the visits.

The current foster family is willing to keep the children. There is a possibility they might adopt the children.¹ A department social worker testified the children are adoptable. The child will provide a substantial challenge for any care giver or adoptive parent.

In March 1998, the State filed a petition to terminate the parental rights of Terrie, Lance and the fathers of the other children. The termination hearing was held in July 1998. The district court terminated Terrie's parental rights under sections 232.116(1)(c), (e), and (g). The court terminated Lance's parental rights to Kendra under sections 232.116(1)(g), (i), and (m). The parental rights to the fathers of the other children were also terminated.

¹ Concerning the adoption of the children by the foster family, at the termination hearing, the father's attorney questioned the foster mother:

Q. Can you tell me at what point you and your husband started discussing adopting these children?

A. I would have to say that we first talked about or discussed it when the children were in family therapy and it was, you know, discussed that it wasn't going very well.

Later, the mother's attorney asked the foster mother:

Q. If you would adopt these children, would you continue the care that they're receiving from all of these providers?

A. Yes.

This was all the evidence on this issue.

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).

Terrie contends she should have been given more visits with the children. She requested more visits, but the department denied her requests. In October 1996, the juvenile court ordered an increase in visits. Terrie's time with the children was increased and changed, so she saw two children at one time. Terrie asserts her ability to reunite with the children was hampered because visitation with the children was limited.

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). The department 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).

Terrie claims the State did not provide reasonable services to reunite her with the children. She admits she received services. Terrie asserts the State should have provided more direct reunification services, such as an in-home parental educator. The services offered were reasonable when assessed with Terrie's requests.

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).

Terrie contends she was a victim of domestic violence and it was her fear of Lance which kept her from protecting her children. She points out she lived in a rural area and had no telephone. She advances Lance would disable her car to keep her from leaving. Terrie says she was afraid to leave Lance and was afraid to intervene when he physically abused the children.

Terrie was abused. Terrie saw the children were being abused. The department investigated the family situation in January and May 1994, but Terrie did not report the extent of Lance's abuse of the children. In February 1994, Lance was admitted to a psychiatric hospital. Terrie did not then report the abuse of her children. There is no showing Terrie will protect the children in future situations. We affirm the order terminating her parental rights.

Lance claims his rights to due process were denied because he was not allowed to be physically present at the hearing on the petition to terminate his parental rights. Lance was in prison at the time of the hearing. His deposition was taken and introduced into evidence.

Termination of parental rights must be accomplished by procedures meeting the requisites of the Due Process Clause. *In re D.J.R.*, 454 N.W.2d 838, 844 (Iowa 1990) (citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71

L.Ed.2d 599, 606 (1982)). Due process requires fundamental fairness in judicial proceedings. *In re J.S.*, 470 N.W.2d 48, 52 (Iowa App. 1991). We have previously held:

Where a parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition, we cannot say the parent has been deprived of fundamental fairness.

Id.

Lance recognizes the holding in *J.S.* is controlling in this case. He asks us to reverse it and establish a minimum standard to afford procedural due process to a parent who wishes to be present at a termination hearing. We decline his invitation. *See also Webb v. State*, 555 N.W.2d 824, 826 (Iowa 1996) and *Kirk v. Iowa Dist. Court*, 508 N.W.2d 105, 109 (Iowa App. 1993).

We affirm the decision of the juvenile court terminating the parental rights of Lance.

AFFIRMED ON BOTH APPEALS.