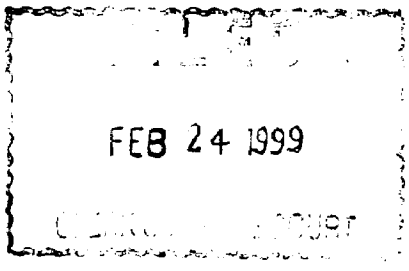
IN THE COURT OF APPEALS OF IOWA

No. 1999-6 (9-048) / 98-1189



IN THE INTEREST OF J.N. and J.N.,
Minor Children,

C.D., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor, Associate Juvenile Judge.

The mother appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

J. David Zimmerman of Pillers, Pillers, & Zimmerman, P.C., Clinton, for appellant.

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

Heard by Sackett, C.J., and Streit and Mahan, JJ.

SACKETT, C.J.

Cynthia, the mother of Jennifer, born in August of 1988, and Joseph, born in August of 1991, appeals an order terminating her parental rights to the children. She contends the State failed to prove the grounds necessary for termination and failed to offer her reasonable services for family preservation when they were requested. Kurtis, the children's father, is on parole in Texas. Cynthia and the children lived for a time with him there, but left because of his abuse. He does not challenge the termination on appeal. We affirm.

The children first came to the attention of the Iowa Department of Human Services in December of 1995 when Joseph, then four years old, was found wandering one morning on a sidewalk outside his home near a busy street. Joseph apparently had gone outside while his mother was yet in bed.

There was an investigation and a report. Cynthia installed a lock on her back door. Also, through visits with Cynthia at that time, a worker learned Cynthia was anorectic. The worker reported Cynthia was isolated in the community without a support system and received no professional help. Cynthia reported to the worker her body regurgitated any food she attempted to eat. She said she fooled her body by smoking marijuana, thus creating a craving to keep food down.

At the time, no recommendations were made other than Cynthia install the lock. The worker who investigated said no other services were recommended as it was anticipated Cynthia would cooperate with any services provided by the Department.

No services were offered until mid-May of 1996, some four months after Joseph was found outside. Then, the family was referred to Lutheran Social Service for entry into its family preservation program.

Lutheran Social Service determined Cynthia needed a psychological evaluation, psychological treatment, budgeting and money management skills, hygiene skills, meal preparation skills, transportation, and parenting skills. Lutheran Social Service reported Cynthia was to attend certain scheduled sessions, learn the required skills, and get gas and electrical power in her home by collecting charitable funds and working with the power companies to repay her debt. The agency recognized Cynthia did not trust others and was hesitant to trust the worker.

Following the referral, in June of 1996, Lutheran Social Service reported Cynthia was taking steps to get gas and electrical power. They also reported Cynthia had admitted herself for psychiatric treatment at the University of Iowa Hospital and was put on a waiting list for inpatient treatment at the Iowa Eating Disorder Treatment Clinic. Records show she was admitted to the hospital on June 8 and the Eating Disorder Treatment Clinic on June 11, 1996, for treatment of suicidal ideation and an eating disorder. She was also found to suffer from marijuana abuse, dysthymia, and a mixed personality disorder. At that time, the children were voluntarily placed in foster care by Cynthia. They have never been returned to Cynthia's custody.

The State advances at the time the children were placed in foster care they were described as undernourished and fearful. Joseph slapped his cheeks and

stuttered. Jennifer had difficulty eating. They expressed fear of their birth father and were concerned about their mother.

However, on June 15, 1996 (at the time the children were placed in foster care), a report was filed by J. R. Reed, M.S.W. Family Preservation Counselor, who works for Lutheran Social Service, which indicated:

> Joseph is a healthy, active, energetic 4 year old. He is relatively well behaved and affectionate towards others. He most often says please and thank you when asking for something from others. He expresses interest in trucks, coloring and playing with his sister Jennifer.
>
> Cynthia's strengths include a remarkable ability to endure hardship. She has worked hard if not harder to improve her family's situation than any other client this worker has worked with. Unfortunately her abilities limit the progress Cynthia has or will ever achieve. Cynthia has taught her children good manners and relatively appropriate behaviors. She is devoted to her Christian faith, and enjoys reading and viewing Christian books and tapes. Cynthia and her boyfriend Kenny plan to marry sometime this fall.

The report also said:

> According to [the foster parents], Joseph and Jennifer are the easiest children they have ever cared for. They report the children are well behaved, aware of behavioral expectations and consequences, use "please" and "thank you." Joseph has demonstrated a healthy appetite, however Jennifer struggles with eating, apparently having picked up poor eating habits from her mother. Jennifer and Joseph reportedly play well with others and are generally affectionate towards others.

The State's allegations as to the children's condition at the time of entry into foster care find support in reports written during the course of the children's residence in a foster care home.

In July of 1996, Lutheran Social Service reported on foster care supervision and therapy and skill development. As to the children, the report said:

> Jennifer is a friendly 7 ½ year old. Jennifer shows signs of an eating disorder and has periods of blanking out. She has many fears that appear to be related to past abuse. Jennifer is small in stature and her recent physical states she falls below the growth chart. Jennifer is a bright youngster but appears emotionally and socially immature for her age. She has had some success in her kindergarten year of school. She should start second grade this fall. Jennifer is rather well behaved and redirects easily.

As to Joseph, the report said:

> Joseph is a slight 4 ½ year old. He too appears to have some issues with food. He requests snacks nearly every hour. He appears to be benefiting from the nutrition. He is on the bottom of the growth chart. Joseph has been referred to an ophthalmologist for difficulty with one eye that appears to wander off. He has problems with night time enuresis. Joseph shows signs of a speech and developmental delay which will be further evaluated. Joseph also has many fears and has related incidents of past physical and emotional abuse. He seems to lack expression of his emotion. Joseph is also well behaved and easily redirected.

In the same month, a petition was filed asking the children to be found to be children in need of assistance. Cynthia agreed to the continued placement of the children in foster care. In late August of 1996, the children were found to be children in need of assistance under Iowa Code section 232.2(6)(c)(2). Cynthia stipulated to the finding.

The children were evaluated at the University of Iowa Hospital Child Psychiatric Unit and were diagnosed as suffering from post-traumatic stress disorder.

Cynthia was given supervised visits twice a week with the children and was allowed to call them on the telephone at any time. Cynthia did not maintain regular telephone visits. She attended most visits but did attempt to cancel several visits. At some point, it was determined visits should be held in the office of the Lutheran

Social Service because of a report Cynthia's home was unsanitary and unsafe, although there also were reports at other times it was not.

In October of 1996, Cynthia married Kenny. Kenny uses a controlled substance and prior to the marriage was incarcerated in Illinois.

In December of 1996, the children again visited their mother in her home. At the end of the month, a therapist recommended the visits again be held at Lutheran Social Service and decreased to one visit a week.

The State filed a petition to terminate parental rights in December of 1997 contending Cynthia's rights should be terminated under Iowa Code section 232.116(1)(e) (1997).[1]

After the petition was filed, Cynthia made frequent telephone calls to the children and allegedly the children regressed. Cynthia's telephone calls were then

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[1] That section provides, in part:

> Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
>
> . . . .
>
> (e) The court finds that all of the following have occurred:
>
> (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) (1997).

reduced to once a week. The children allegedly resisted being alone in a room with Cynthia during scheduled visits.

The juvenile court received into evidence some forty-nine exhibits consisting of pleadings and reports. The juvenile court also, with other evidence, received the testimony of witnesses who testified in Cynthia's behalf. Janice Mussmann, Cynthia's mental health therapist, testified to working with Cynthia, who had made progress but would need to stay on medication. Susan Brown, Cynthia's substance abuse counselor, testified Cynthia had completed treatment and her prognosis for recovery was fair. Betty Johnston, a friend of Cynthia's, testified if the children were returned Cynthia would do her best. Johnston was concerned because Joseph would not have the big screen television he had at foster care.

The State presented the testimony of Deborah Ploog, a special education teacher, who testified she had known Jennifer over a year and Joseph since school started. She had worked with them in the special education classroom. Ploog testified Jennifer exhibited difficulties adjusting to school. She said Jennifer made progress. She also testified there were relapses related to the foster mother's report of Cynthia's calls and visits. She saw no similar relapses in Joseph.

The foster mother testified Jennifer was fearful when she came to their home on June 7, 1996. She said Jennifer improved, but with Cynthia's frequent telephone calls two months prior to the hearing she saw problems return. She said Joseph also became aggressive. She testified Jennifer exhibited concern about her mother finding a place to live. She said both children love their mother.

Tina Royer, a Case Worker II with Lutheran Social Service, testified she had been the children's foster care worker since June 7, 1996. She supervised visits.

The juvenile court found:

> Replacement of the children in the parental home would be contrary to the best interest of the children and reasonable efforts have been made to prevent or eliminate the need for removal of the children from the home. These children are faced with a situation whereby their mother still does not comprehend the negative influences her behavior and that of her husband have on the children. The mother's prognosis for recovery from substance abuse is FAIR at best and still she resides with a substance abuser. Her home is still unsanitary and these children should not have to wait any longer for their mother to decide to take the steps necessary to be a loving and competent parent.

The juvenile court then terminated Cynthia's parental rights to both children under Iowa Code sections 232.116(1)(e) and 232.117. The court ordered visits with Cynthia stopped except for a good-bye visit if approved by the guardian ad litem. The children were ordered to remain in the custody of the Department of Human Services.

Cynthia first advances the finding the children could not be returned to her care was not supported by clear and convincing evidence. The State contends Cynthia did not regularly attend parenting sessions, her home is in an unsatisfactory condition, she is not concerned about her husband using marijuana, and although she was in therapy, she was not addressing past issues and was not taking prescribed medication.

We review the termination de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984); *In re Miller Children*, 228 N.W.2d 60, 61 (Iowa 1975). However, we give

weight to the juvenile court's findings of fact, especially the credibility of the witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *W.G.*, 349 N.W.2d at 491.

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State has the right to terminate the legal relationship between a parent and a child, but the constitution limits its power to do so. *Quilloin*, 434 U.S. at 255, 98 S. Ct. at 554, 54 L. Ed. 2d at 519. The State must meet due process requirements in a termination of parental rights procedure. *See Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). Due process requires sufficient notice of the complaint against the parent and of the time of the hearing. *See Alsager v. Iowa Dist. Ct.*, 406 F. Supp. 10, 17-21 (S.D. Iowa 1975); *Davis v. Smith*, 266 Ark. 112, 583 S.W.2d 37, 42 (1979); *People v. Hoehl*, 193 Colo. 557, 568 P.2d 484, 486 (1977); *State v. Joyce*, 361 So.2d 406, 407 (Fla. 1978); *Woodruff v. Keale*, 64 Haw. 85, 637 P.2d 760, 767 (1981); *State v. Meinert*, 225 Kan. 816, 594 P.2d 232, 234-35 (1979); *Bowers v. State*, 38 Md. App. 21, 379 A.2d 748, 749-51 (1977); *People v. Jackson*, 140 Mich. App. 283, 364 N.W.2d 310, 312 (1985); *Linn v. Linn*, 205 Neb. 218, 286 N.W.2d 765, 769 (1980); *In re Mills*, 52 Or. App. 777, 629 P.2d 861, 864-65 (1981); *Commonwealth v. Mack*, 467 Pa. 613, 359 A.2d 770, 772 (1976); *In re K.B.*, 302 N.W.2d 410, 411 (S.D. 1981); *In re D.T.*, 89 S.D. 590, 237 N.W.2d 166, 169 (1975); *In re Aschauer*, 93 Wash. 2d 689, 611 P.2d 1245, 1249-50 (1980); *State v. Killory*, 73 Wis. 2d 400, 243 N.W.2d 475, 479-80 (1976).

While a parent has a constitutionally protected right in his or her child, the State has a responsibility to see the children within its borders receive adequate care and treatment. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Thus, the State must intervene when parents do not fulfill their responsibilities. *Id.* The court has often recognized there exists a parental interest in the integrity of the family unit; nonetheless, we also are cognizant this interest may be forfeited by certain parental conduct. *Id.* In particular, the State may interfere to prevent possible harm as well as intervene as a remedial measure. *Id.*

To terminate parental rights, the State has the burden of proving the grounds for termination by clear and convincing evidence. *See In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). A parent has the right to due process and a fair trial when the State seeks to terminate parental rights. *In re R.B.*, 493 N.W.2d 897, 898 (Iowa App. 1992); *see also Alsager*, 406 F. Supp. at 22. A parent's right to have custody of his or her child should be terminated only with the utilization of the required constitutional safeguards. *See Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042, 1045 (1923); *In re T.R.*, 460 N.W.2d 873, 875 (Iowa App. 1990).

The issue of whether or not to legally sever the biological ties between parent and child is an issue of grave importance with serious repercussions to the child as well as the biological parents. *R.B.*, 493 N.W.2d at 899. Therefore, the goal of a child-in-need-of-assistance proceeding is to improve parenting skills and maintain the parent-child relationship. *Id.* When the State seeks termination, it is because the

State has been unable to furnish the help necessary to correct the parent's deficiencies. *See id.* An underlying issue in a termination action is whether the parent is beyond help. *Id.* A parent does not have an unlimited amount of time in which to correct his or her deficiencies. *See In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990).

With these principles in mind, we address Cynthia's challenge the State failed to make reasonable efforts to preserve this family.

The State contends Cynthia failed to challenge the adequacy of the services offered and made no demands for other services. Cynthia did ask for family therapy after the children had been in foster care sixteen months. This request was denied. The State contends this was not sufficient as she did not make application to the court. The State also advances Cynthia did not utilize all opportunities given to telephone the children and exercise visits.

There is a requirement reasonable services be offered to preserve the family unit. *See In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *In re B.L.*, 491 N.W.2d 789, 791-93 (Iowa App. 1992) (Donielson, J., dissenting); *In re A.W.*, 464 N.W.2d 475, 478 (Iowa App. 1990) (Schlegel, P.J., concurring in part and dissenting in part); *In re M.H.*, 444 N.W.2d 110, 113 (Iowa App. 1989). A court is required to find reasonable efforts have been made to eliminate the need for removal before a removal is ordered. *See* Iowa Code § 232.102(4); *see also* 42 U.S.C. § 671(a)(15).

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 C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993) (Habhab, J., specially concurring).

> The core of the reasonable efforts mandate is the child welfare agency must make reasonable efforts to prevent placement or to reunify families in each case. This is both a required element of each state's Title IV-E state plan and a condition of federal funding for individual foster care placements. 42 U.S.C. §§ 671(a)(15), 672(a)(2); *In re L.M.W.*, 518 N.W.2d 804, 806-07 (Iowa App. 1994). Because federal law contains no elaborate definition of "reasonable efforts," the states have considerable discretion in meeting the requirement in individual cases. 42 U.S.C. §§ 671(a)(15), 672(a)(2). Federal law does make it clear, however, the case plan for each child is an integral element of the reasonable efforts implementation process. *Id.* The federal regulations implementing the reasonable efforts requirement mandate each child's case plan must contain a description of what services were offered and provided to prevent removal of the child from the home and to reunify the family. 45 C.F.R. § 1356.21(d)(4) (1990). In addition, federal law clearly requires states provide a system of fair hearings to enable families whose request for services has been denied or not acted upon to seek review of the denial. 42 U.S.C. § 671(a)(12); Edna McConnell Clark Foundation, *Making Reasonable Efforts: Steps For Keeping Families Together* 47, 71 (19__).

In re H.L.B.R., 567 N.W.2d 675, 679 (Iowa App. 1997).

Cynthia has been offered a number of services. In seeking termination, the State is saying despite their time, effort, and money expended, they could not help Cynthia.

The October 29, 1996 order makes a general finding reasonable efforts have been made to eliminate the need for removal. The order does not elaborate on what efforts were made. There is no evidence Cynthia, at the time of the October 1996 hearing, challenged the fact reasonable efforts had not been utilized or made any request for specific services to allow the family to remain together. While the State

had the obligation to make the efforts, the parents have a responsibility to demand services prior to the termination hearing. *C.D.*, 508 N.W.2d at 101. Challenges to the plan for reunification should have come when the plan was entered. *See id.*

Have the services offered been sufficient to meet the reasonable efforts test? The State contends they are. In advocating for termination, the State also recognizes the services it offered have not solved Cynthia's problems. It is easy to blame the failure on Cynthia. However, she is a woman who grew up in a fractured family, has limited education, and has little or no family support. Her lack of education and job skill and mental problems keep her below the poverty line.

At the time Cynthia voluntarily put her children in foster care, she needed help with money management. She lived in substandard housing. She needed assistance in improving her housing. She needed help with her mental problems. She needed support in dealing with the children's problems.

Cynthia never sexually or physically abused her children. She was forthright in sharing with service workers her problems and frustrations. The first report filed found her cooperative.

Cynthia was offered treatment for her mental problems. She admitted herself as a patient to the University of Iowa Hospital in Iowa City. She continues in counseling.

Cynthia was offered visitation with her children; however, after the children were in foster care, the evidence shows a gradual curtailment of her access to the children because the children allegedly were upset after the visits. Cynthia was

blamed for upsetting the children. There are many factors which may have contributed to the children's alleged actions after seeing their mother. It could be things she said and did. It could be the fact the children's schedule was changed. It could be attitudes of the foster parents toward Cynthia seeing her children. Rather than exploring the reasons and attempting to improve the visits, they were curtailed. It is difficult to see how curtailing time between parent and child will help reunify a family. However, when the visits were curtailed, Cynthia did not complain. The record does not tell us whether this was the result of Cynthia's inaction or the lack of a strong advocate in her behalf. These challenges were not timely made.

We cannot say on this record the reasonable efforts test was not met. We will not reverse the juvenile court on this ground.

We next address Cynthia's contention the State has not proved the necessary grounds for termination.

The initial report when the children first entered foster care would support a finding Cynthia is an adequate mother. There is no evidence she has sexually or physically abused her children. The evidence of her shortcomings as to the care of the children comes from reports her visitation upset the children and her house was dirty. The criticisms of her interaction with the children during supervised visitation do not rise to the level of supporting a finding the children were at risk in her care.

There is evidence Cynthia continues to suffer mental problems, her husband uses drugs, and her living quarters are not adequate. She has had parental rights terminated to two other children.

The focal issue is whether the State has shown Cynthia cannot provide her children with a loving and safe environment.. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). The juvenile court found she cannot.

Cynthia does not meet the norm society has set for a good mother. Her ability to care for her children is curtailed by her own limitations and her failure to make good decisions about the children's care. Cynthia's children love her. Cynthia loves her children. There is no evidence anyone else does.

There is a certain frustration in recognizing Cynthia cooperated with service providers and voluntarily assented to the children being placed in foster care only to ultimately see the State petition for the termination of her parental rights.

The juvenile court found clear and convincing evidence supports the legislative dictates necessary to terminate parental rights. The juvenile court, by seeing witnesses and hearing them testify, has an additional tool to assess credibility that we do not. Giving the juvenile court deference for credibility findings, we affirm.

The record before us gives us no view of the situation the children will face in State care. There is a general statement the children are very adoptable. There is no evidence from which we can assess the credibility of this statement. There is no indication the foster parents are interested in adoption. The children are bonded to their mother and will suffer as a result of the severance of this bond. Both children have a series of problems that may well limit homes that may be available to them. We cannot predict their future. There is a possibility their interests might be better served by further attempts to save their biological relationship. *In re D.A.W.*, 552

N.W.2d 901, 903 (Iowa App. 1996). The State and the guardian ad litem, who also urges termination, have a continuing obligation to assist these children in finding a secure environment.

AFFIRMED.