FILED
JAN 29 1986
CLERK SUPREME COURT

IN THE COURT OF APPEAL OF IOWA

IN THE INTEREST OF M.M.Y./O. AND M.E.Y./O., Children;

L.G.Y.D., Natural Mother,

Appellant.

) **Filed January 29, 1986**

) 5-612 / 85-776 131

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Appeal from the Iowa District Court for Johnson County, Brent G. Harstad, Judge.

The mother of two girls appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Sharon A. Mellon, Iowa City, for appellant.

Joseph Holland, Iowa City, for the children's maternal grandparents.

Thomas J. Miller, Attorney General; Matthew W. Williams, Assistant Attorney General; and Mary McCollum, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

The mother of two young girls appeals the termination of her parental rights. She says the court failed to specify which parts of the Child in Need of Assistance record it judicially noticed and that this is reversible error. She further says there was insufficient evidence to support the termination of her parental rights. We affirm.

The mother, L.G.Y.D., in her first claim, relies on In the Interest of Adkins, 298 N.W.2d 273 (Iowa 1980). There, the court found that termination and CHINA proceedings were interdependent and interwoven and that judicial notice could be make of the prior CHINA case, stating:

> [I]t is permissible for a trial court in a subsection 232.114(5) termination proceeding to judicially notice the prior CHINA case, including the evidence, providing certain safeguards are followed. Papers requested to be noticed must be marked, identified, and made a part of the record. Testimony must be transcribed, properly certified, marked and made a part of the record. Trial court's ruling in the termination proceeding should state and describe what it is the court is judicially noticing. Otherwise, a meaningful review is impossible.

Id. at 277-278. The court here took judicial notice of the CHINA proceedings, but L.G.Y.D. says the court improperly did not specify which portions of the record it was noticing, and claims the ruling should be reversed terminating her rights.

We are unpersuaded by this argument for several reasons. First, no objection was made by the mother's counsel to notice of the prior proceedings. Second, the judge indicated notice was being taken of the CHINA file as reflected in State's exhibits 1, 2, and subexhibits. Finally, Atkins specifically provided that failure to delineate exactly what portion of the record was being noticed is not reversible error when the appellate court can reach the same conclusion as the trial juvenile court without resort to the CHINA proceedings. Id. at

218. Although we have included information from these reports in our review of the evidence delineated later in this opinion, we find the court's conclusion supported when viewing only evidence other than the CHINA proceedings.

The court terminated the mother's parental rights to the two girls, M.M.Y./O., born August 19, 1977, and M.E.Y./O., born June 14, 1979. The appellant contends the court erred in a number of particulars as reflected in statements made by the court in its ruling.

Appellant objects to the court's statement in its order that she had beaten the children in the past and allowed them to be injured while in her care. She says there is no evidence to support this.

There was a substantiated report of sexual abuse against one of the children by a man with whom the mother was living. Although the mother reported the man to authorities for this abuse, she and the children continued to live with him. She tried to maintain contact with him even after this man was jailed on another offense. A social worker also reported that one of the children had a cigarette burn on her arm in 1982. Although the mother denied causing the burn, whether she in fact did is a decision best left to the court which viewed the witnesses to determine who was more credible.

Appellant denied the court's indication that she was offered services and refused to participate. Her performance in attending Parents Anonymous meetings showed less than full cooperation. She did not attend any meetings scheduled under the first plan, and attended only twelve of twenty-six meetings under the second plan. She was given counseling by her social worker. Counseling was offered for her problem in compulsive lying and fantasizing stories.

Objection is made by appellant to the court's comment that her excuses for missing the Parents Anonymous meetings were insufficient. Although she

claims a lack of transportation prevented her from attending more meetings, she provided an excuse to those involved in helping her on only two occasions.

The mother also objects to the court's conclusion the children are not bonded to their mother, noting testimony that when they visited her they hugged and kissed their mother, and cried when the visit ended. While appellant may disagree with the court's conclusion, we find it supported by the testimony of a psychologist who examined the children and the psychologist who examined the mother. Other testimony confirmed the children were fearful their mother might kidnap them, as she had on two prior occasions.

The mother says the court is wrong in describing her activities as including a trip to Missouri, "a whirlwind marriage," then returning and living with another person. While the language of the court might have been more harsh than appellant cared for, the facts in the record support the statement. The mother went to Missouri for a week, returned married, then lived with another man.

The court noted that "it appears that (the mother) has again tied up with a violent type of male friend." She objects to this, saying her judgment regarding men has improved. The record shows she lived with the man she reported for sexually abusing her children and who robbed a bank, and lived with another man who threatened a person with a knife and severely beat her. The mother is now married to another man, and they have had three physical fights, resulting in removal of this man's child from their home. She has had thirteen relationships in three years to men who are alcoholic, violent, or both.

The children have stated they want to stay in the foster home. Appellant says the children, aged five and seven when the statements were made, are not old enough to express an opinion. We believe this was evidence for the court to consider and weigh, and will not presume the court gave this information more weight than it should have been accorded.

Many other complaints are made about statements of the court in its ruling. We do not find them to be egregious errors of law or to evidence undue prejudice against the mother. We find ample evidence in the record outside of the statements of the court which supports its decision. We will review some of the more salient facts which provide clear and convincing evidence to support the court's order.

The appellant has tried to sign over custody of the children to other people on at least three occasions, the most recent in September 1984. The first time was when she left to live with a man and signed a paper purporting to give custody to an acquaintance. August 17, 1984, she released custody of the children so that she could travel to Texas with a man named Chris. She revoked this consent within ninety-six hours. Less than one month later, on September 5, 1984, she again attempted to give up custody by asking the foster parents to adopt the girls.

The mother admits she has difficulty accepting the youngest child because she is bi-racial. This is the same child who had a cigarette burn on her arm. When she had custody of the children in 1981 she moved five times in nine months. One move was to Florida with the man she later accused of abusing the youngest child. A man with whom the mother had lived for some time, Walter, had cared for the children as his own and obtained custody by default. The mother returned to Burlington from Florida after the man she had been with was put in jail. Walter then took the children into his custody and cared for them until he died in February 1985. While he cared for them the children were kidnapped by the appellant twice. Once was in July 1982. During the ten days she had the children with her she tried to apply for ADC and food stamps. When children were retrieved by Walter, the younger girl had a burn on her arm and they said they had not eaten in some time.

The second kidnapping occurred in December 1982 when the appellant took the children to Missouri. Appellant was jailed for violating a custody order. Upon the girls return to Walter, they reported they had been forced to inhale marijuana smoke and had beer poured down their throats. The reports of abuse could not be substantiated by the worker because the mother refused to speak with the investigator.

After Walter died the children were placed into foster care. The mother went from jail to a half-way house where, according to her, she met a man named Robert, and was "married" to him the same night by a bar maid. When Robert threatened another resident at the home with a knife, they were asked to leave and the couple moved in with Robert's other wife. She moved again when Robert seriously assaulted her. She moved downstairs with the family of the man she is now married to. Several other liaisons with different men followed.

The first case plan was approved by the court on August 5, 1983. It required appellant to keep one job for six months, go to Parents Anonymous, go to meetings with a social worker, and maintain visitation with the girls. During the five months the plan was implemented, appellant had ten residences and had four jobs, lasting from four days to one month. She did not attend any Parents Anonymous meetings, and kept three of ten appointments with her social worker. Many of her visits with the girls were canceled, usually with less than one hour's notice.

A new plan was implemented in January 27, 1983, providing for an incentive program. It provided that if she complied with the plan, she could increase the number of hours she visited with the girls. The appellant improved her performance somewhat and increased her visitation from one hour to four hours. However, she attended only twelve of twenty-six Parents Anonymous meetings

and canceled four of eighteen visits with no warning. She moved five times, was evicted once, and asked to leave two homes. She held five jobs, and quit or was fired for insubordination or for lying. The children's psychologist, the mother's psychologist, and the two social workers involved recommended termination of the mother's parental rights.

We find ample evidence to support the court's finding that the children cannot be returned to their mother without facing harm.

AFFIRMED.