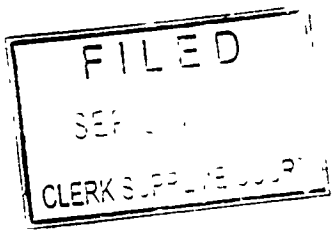
IN THE COURT OF APPEALS OF IOWA

No. 1999-172 (9-389) / 98-2241
Filed September 29, 1999



IN THE INTEREST OF A.E.S. and C.D.S.,
Minor Children,

S.S., Mother,
Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

The mother of two minor children appeals a district court order terminating her parental rights. **AFFIRMED.**

Janice B. Binder of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Barbara E.B. Galloway, Assistant Attorney General, and Barbara A. Edmundson, Assistant County Attorney, for appellee State.

Leslie D. Lamping of Day, Meeker, Lamping & Schlegel, Washington, guardian ad litem for minor children.

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

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HUITINK, J.

I. Background Facts and Proceedings.

Sonya S. is the mother of A.E.S. and C.D.S. Both children were removed from her home in April 1997. They were subsequently adjudicated children in need of assistance based on findings of parental neglect and failure to exercise reasonable care in their supervision. *See* Iowa Code §§ 232.2(6)(b) and (6)(c)(2). Following an August 1997 dispositional hearing the children were returned to Sonya's care subject to, among other requirements, family centered services, individual counseling, and Sonya's continued receipt of medical treatment for physical and mental illness. In February 1998 the court ordered the children returned to foster care based on concerns for the declining conditions of Sonya's home, the children's absences from school, Sonya's financial distress, and the children's chronic infestation with head lice.

The State initiated termination proceedings on October 19, 1998. The statutory grounds for termination cited by the State were the continued existence of circumstances necessitating adjudicating the children as children in need of assistance and the children could not be returned to Sonya's custody. *See* Iowa Code §§ 232.116(1)(c) and 232.116(1)(e).

The State's termination petition was heard on November 3, 1998. At the close of the hearing the court ordered continued visitation pending its decision on the merits. On November 18, 1998, the court, after consultation with counsel for the parties, modified its visitation order.

In an order filed November 29, 1998, the court found Sonya, despite a wide variety of services, had failed to correct those circumstances of neglect and supervision resulting in the underlying adjudication. The court also determined that Sonya could not provide the children with adequate food, medical care, and supervision. Sonya's parental rights were accordingly terminated pursuant to sections 232.116(1)(c) and 232.116(1)(e).

On appeal Sonya contends the State has failed to meet its burden to prove by clear and convincing evidence that her parental rights should be terminated. Sonya argues the State failed in its obligation to make reasonable efforts to reunite her family and termination was not in the children's best interest. Sonya also claims she was denied due process of law because she was denied adequate notice of the posttermination visitation hearing and the court's termination decision was partly based on evidence presented at the posttermination proceeding.

II. Standard of Review.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984) *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* at 491-92.

III. Sonya's Due Process Claim.

A parent has a right to due process and a fair trial in proceedings to terminate rights. *In re R.B.*, 493 N.W.2d 897, 898 (Iowa App. 1992). Due process requires fundamental fairness including notice and an opportunity to be heard.

The proceeding about which Sonya now complains was convened on the State's motion to modify the visitation arrangements set by the court at the conclusion of the termination hearing. The record indicates Sonya and her attorney participated in the hearing and consented to the submission of the issue based on arguments and professional statements of counsel. We accordingly find no error of constitutional dimension. We also note the absence of any objection or issues raised concerning the resulting modification of Sonya's posttermination hearing visitation with the children.

Sonya also claims the juvenile court's consideration of facts determined at this hearing in its termination decision violated her due process rights. Even if we were to agree with Sonya's narrow interpretation of the juvenile court's findings of fact, we do not believe the alleged error implicates the due process clause. *See State v. Traywick*, 468 N.W.2d 452, 455 (Iowa 1991) (not all rulings at a trial affecting the fairness of the proceedings implicate the due process clause). The "allegedly erroneous ruling must go to the heart of the case in order to be of such magnitude to implicate the due process clause." *Id.* In any event, our de novo review, confined to the record made at the termination hearing, is the legal and practical equivalent of appellate review for constitutional error.

IV. Reasonable Efforts.

The State's obligation to make reasonable efforts to preserve the family unit is well settled. *See In re A.L.*, 492 N.W.2d 198, 201 (Iowa 1992). A parent's obligation to demand needed or different services prior to the termination hearing is equally well settled. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Although Sonya cites numerous deficiencies in the services provided, the record fails to disclose any pretermination hearing demands for service improvement. Because Sonya's complaints are untimely, she has failed to preserve any reasonable efforts issues for appeal. *Id.*

V. Sufficiency of the State's Evidence.

Termination pursuant to Iowa Code section 232.116(e) requires clear and convincing proof of the following:

> 1. the child is at least four years of age;
>
> 2. the child has been adjudicated a child in need of assistance.
>
> 3. the child has been removed from parental custody for twelve of the last eighteen months;
>
> 4. the child cannot be returned to the parents' custody as provided in Iowa Code section 232.102.

Concerning element four, we have said:

> Subsection 232.102 of the Iowa Code governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the child cannot be returned to parental custody because the child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and "reasonable efforts have been made to prevent or

> eliminate" the harm. If custody is transferred to foster care authorities, subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child."

In re J.V., 464 N.W.2d 887, 890 (Iowa App. 1990). The only element subject to dispute is whether Sonya's children can be returned to her custody. Because there are no reasonable efforts issues remaining, our concern is whether the children can be safely returned to Sonya's custody.

As noted earlier, the children were originally removed and adjudicated because Sonya neglected to provide the children with appropriate food, shelter, and medical care. Our review of the termination record discloses abundant evidence the children would be exposed to the same risk if returned to Sonya's custody.

Sonya has failed to acquire and maintain suitable housing for the children. She has been evicted from her apartment at least twice. Sonya has also failed to respond to services intended to improve the sanitation and cleanliness of her home. Her continued inability to properly discipline the children and compel their attendance at school demonstrates a distinct lack of desired improvement in her parenting skills. Additionally, Sonya seems oblivious to the negative implications for her children resulting from her turbulent relationships with multiple male cohabitants.

We affirm on this issue.

VI. Best Interests of the Children.

Sonya correctly notes, despite the foregoing conclusions, that we need not terminate her parental rights if termination is not in the children's best interest. *See*

In re C.W., 514 N.W.2d 754 (Iowa 1994). She cites her abiding interest in the children, their affection for her, and emotional trauma attending separation from her.

These factors have, regrettably, failed to provide Sonya with sufficient inspiration or motivation to correct those circumstances necessitating removal of her children. Sonya's past performance and failure to make needed improvements within the time allowed are indicative of the future quality of care she is capable of providing. *In re J.J.*, 459 N.W.2d 489, 493-95 (Iowa 1990). These children should not be forced to wait indefinitely for Sonya to realize and assume fundamental parental obligations. *In re N.F.* 579 N.W.2d 338, 341 (Iowa App. 1998). We find the best interests of the children are better served by terminating Sonya's parental rights.

We have considered all of the remaining arguments made by the parties, and find that they are either controlled by the foregoing or their resolution is unnecessary to dispose of Sonya's appeal.

AFFIRMED.