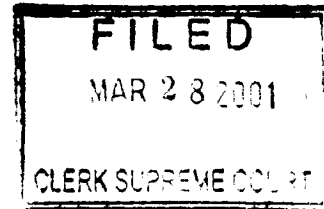


IN THE COURT OF APPEALS OF IOWA

No. 1-051 / 00-1008
Filed March 28, 2001

IN THE INTEREST OF M.K.G.,
Minor Child,

S.K., Mother,
Appellant.



Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

The mother of minor child M.K.G. appeals a district court order terminating
her parental rights. **AFFIRMED.**

Marla Suddreth of Borseth, Genest & Suddreth Law Office, Altoona, for
appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Martha L. Johnson, Assistant County Attorney, for appellee State.

Susan V. Conn, Cedar Rapids, guardian ad litem for minor child.

Amy L. Kepes of Thomas J. Reilly Law Firm, West Des Moines, for father
F.G.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Sheila, the mother of Milton, appeals a juvenile court order terminating her parental rights. She claims 1) the State failed to prove Milton could not be returned to her custody and (2) the court should have entered a permanency order in lieu of terminating her parental rights. We affirm.

I. Background Facts and Proceedings.

Famous and Sheila are the unmarried parents of Milton, born on September 18, 1997 and an older child not the subject of this proceeding but also adjudicated a child in need of assistance. Sheila functions at a low level intellectually. She also suffers from seizures.

When Milton was six weeks old, he gagged on some vomit and had trouble breathing. In addition, physicians discovered a problem with his ability to ingest food. Milton was hospitalized, underwent surgery to correct a thickened valve in his stomach, and was placed on an apnea monitor to alert staff to lapses in breathing. Sheila stayed with Milton at the hospital. While there, she slept through apnea alarms and crying episodes.

The State filed a child in need of assistance petition based on Sheila's inability to meet Milton's medical and nutritional needs. The juvenile court ordered Milton removed from Sheila's custody and subsequently adjudicated him a child in need of assistance. He was placed in foster care and later transferred to his father. The court ordered Famous to supervise all contacts between Milton and Sheila. Famous did not do so and Milton accidentally overdosed on his mother's seizure medication. Milton's older aggressive brother also traumatized him. Milton ultimately was placed with his father's aunt, where he thrived.

The Department afforded Sheila and Famous extensive services to improve the home and parenting skills. In 2000, the State filed a petition to terminate both parents' rights as to Milton. The court granted the petition. Sheila appeals.

II. Scope of Review

Our review of a termination proceeding is de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds supporting termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the best interests of the child. *Id.*

III. Termination.

The juvenile court terminated Sheila's parental rights pursuant to Iowa Code section 232.116(1)(g) (child cannot be returned to custody of parents). Sheila first maintains the State failed to prove by clear and convincing evidence that Milton could not be returned to her care. We disagree.

The record contains clear and convincing evidence that Sheila was unable to parent Milton. A mental health evaluator tested Sheila and watched her interact with the children. She concluded "Sheila is not capable of adequate parenting and supervision." She reasoned:

Her organic testing, as well as the levels of her capacity for new learning, suggest that she will be incapable of learning the skills to adequately parent them any time in the near future, if at all. As such, other options for parenting these 2 boys must be considered. Neither Suave nor Milton showed any signs of attachment to Sheila and as such, probably do not view her as a source for meeting their needs.

A court appointed special advocate echoed this sentiment, noting that in the two and a half years preceding her report, Sheila and Famous had failed "to

demonstrate their ability to provide a safe and nurturing home for their children."

We conclude the State proved Milton could not be returned to Sheila.

IV. Permanency Order.

Sheila next contends the juvenile court should have entered a permanency order in lieu of termination. Under Iowa Code section 232.116(3)(a), the court need not terminate a parent's rights, even though grounds exist, if the child is placed with a relative. This provision is discretionary. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). We are persuaded that the juvenile court did not abuse its discretion in refusing to terminate Sheila's parental rights under this section. The court appointed special advocate stated, "I am concerned that a very important first 2 1/2 years of Milton's development has already elapsed without him being in a stable permanent environment and that he needs that stability today." The juvenile court reaffirmed this need for stability, stating:

Milton has waited for more than a year for his parents to provide the safe and stable home he needs and deserves. Given his age and need for permanency and the parents' failure to utilize the services that would have fostered reunification, it is in Milton's best interests. that parental rights be permanently terminated. He has thrived in his great aunt's care and she has clearly demonstrated that she can meet all of his needs now and in the future. Termination of parental rights will enable Milton to continue to thrive in a nurturing and stable environment.

We agree with the juvenile court that Milton's best interests are served by termination of Sheila's parental rights.

AFFIRMED.

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