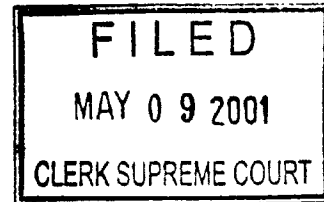


IN THE COURT OF APPEALS OF IOWA

No. 1-228 / 00-1827
Filed May 9, 2001

**IN THE INTEREST OF N.J.,
Minor Child,**

**S.S., Mother,
Appellant.**



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

A mother appeals from the termination of her parental rights to her daughter. **AFFIRMED.**

Mark C. Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Eric Goers, Assistant County Attorney, for appellee State.

Daniel Kitchen of Tindal, Erdahl, Goddard & Nestor, Washington, guardian ad litem for minor child.

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

VAITHESWARAN, J.

Sherry appeals a juvenile court ruling terminating her right to parent Nicole. We affirm.

I. Background Facts and Proceedings

Sherry and Robert lived together in Ohio and together had four children: Robert, Richard, Brandon, and Nicole. Nicole was born in August 1992. When Nicole was a toddler, Sherry left Robert, married a neighbor named Pablo, and moved to Iowa with her new husband and children.

Nicole is a child with a number of special needs. According to her mother she threw temper tantrums and acted erratically from the time she was an infant. In addition, she wetted and soiled herself and committed acts of self-mutilation. When Nicole was five, her oldest brother Robert sexually abused her three times over an eight month period. On one occasion, her second brother Richard participated in the abuse.

After the sexual abuse came to light, professionals advised Sherry to separate the children and supervise them more closely. In contravention of this advice, Sherry allowed the children to play together unsupervised outside. Although the older boys did not abuse Nicole during this unsupervised period, they did attempt to burglarize the neighbors' house. The juvenile court ordered Nicole and her two oldest brothers temporarily removed from the home.

The court adjudicated Nicole a child in need of assistance but ordered her returned to her home. Nicole returned home, only to be sexually abused again, this time by a female babysitter.

The juvenile court once again ordered Nicole removed from her home and placed in foster care, where she remained for the balance of the proceedings. Sherry exercised twice-weekly supervised visitation with Nicole and underwent psychological evaluations and counseling, as did the children.

The State filed a petition to terminate the parental rights of Sherry and Robert as to Nicole. The juvenile court granted the petition. Only Sherry appeals.

II. Iowa Code section 232.116(1)(e)

The juvenile court terminated Sherry's right to parent Nicole under Iowa Code section 232.116(1)(e).¹ We review the court's ruling de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Sherry contends the State failed to prove that Nicole could not be returned to her home, as required by Iowa Code section 232.116(1)(e)(4). We disagree. Although Robert and Richard were out of the home at the time of the termination proceeding, there was evidence that Nicole's youngest brother, Brandon, had also engaged in sexual misconduct, albeit not with Nicole. As the juvenile court stated:

¹This provision authorizes termination if:

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.

Every service provider in this case has indicated grave concerns about returning Nicole to [Sherry's] home. No service provider believes that [Sherry and her husband] would be able to provide Nicole with the heightened supervision she needs as a sexual abuse victim, especially given Brandon's presence in the home.

We are reluctant to second guess the professional opinions of those who have evaluated or provided services to the family. We conclude the State satisfied the requirements of Iowa Code section 232.116(1)(e).

III. Reasonable Efforts

Sherry next contends the Department did not make reasonable efforts to reunite the family after Nicole was removed from the home the second time. She maintains termination was a *fait accompli* after the second abuse incident was discovered and asserts the Department's reports are slanted to achieve this end. What Sherry ignores is the shift in priorities mandated by the 1997 Adoption and Safe Families Act. Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.). Long-term efforts at family reunification are no longer required or even recommended. Instead, the law focuses on "time-limited family reunification services." See 42 U.S.C. §629a(a)(7). The new law places "a greater emphasis on the health and safety of the child, and mandates a permanent home for a child as early as possible." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). In furtherance of this new priority, our statute now states, "[i]f returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child." Iowa Code § 232.102(10)(a) (2001). Although the 1999 law governing this termination proceeding does not contain this

language, it does state "a child's health and safety shall be the paramount concern in making reasonable efforts." Iowa Code § 232.102(10)(a).

The record contains ample evidence that Brandon's presence in the home posed a serious risk to Nicole's health and safety, given his history of sexual misconduct. As the juvenile court stated in its permanency order:

Brandon exhibits overly sexualized behavior. He has been a perpetrator of sexual abuse (although not on Nicole) and may also be a victim of sexual abuse. There is no way that he should be around any younger children, let alone a sexual abuse victim such as Nicole. The Court is quite clear that Nicole's permanency plan cannot include a current or anticipated return to her mother's home. Placement with her mother would be contrary to Nicole's welfare. This is despite the fact that reasonable efforts have been made to return Nicole home.

Brandon's presence in the home, therefore, effectively precluded the Department from working more aggressively toward reunifying Nicole with her family. Despite this impediment, the Department provided Nicole with play therapy and the family with parent skill counseling and supervised visitation twice a week. Under these circumstances, we are not convinced the Department violated the "reasonable efforts" mandate.

As for Sherry's claim that the Department's reports were slanted, we believe the juvenile court's thorough evaluation of all perspectives on termination and our mandate to review the record de novo, should alleviate her concern about a biased presentation.

IV. Best Interests

Sherry finally argues it is not in Nicole's best interests to terminate the parental relationship, given the close bond between the two. In determining what is in a child's best interests, we must consider the child's safety, the best

placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional needs of the child. Iowa Code § 232.116(1)(e).

We agree with the juvenile court that Nicole had a close bond with Sherry. We also are impressed with Sherry's sustained interest in preserving the parent-child relationship as reflected by her regular attendance at supervised visits and by her attempts to improve her parenting skills. Indeed, it is these efforts on her part which give us the most pause. Shortly after Nicole was removed for the second time, Sherry's prognosis for improving her parenting skills was dim. A psychologist stated:

[Sherry] will likely continue to need to have resources provided to her in order for her to successfully parent any of her children. Specifically, she appears to have difficulties in independently assessing appropriate boundaries and levels of supervision for her children. She needs to be given specific guidelines that she can follow in terms of appropriate discipline and supervision for her children. She also needs help in assessing the safety of situations in which she places her children.

However, in the months preceding the termination hearing, records reflect Sherry had made real strides in managing Nicole's behavior during supervised visits. She was asserting her role as parent and Nicole was responding positively.

Notwithstanding this improvement in Sherry's parenting skills, there is little indication she could ensure Nicole's safety. When given the opportunity to do so after Nicole's first removal from the home, Sherry placed Nicole with a babysitter she knew little about and who the Department stated was a "known sex offender." While it is unclear from the record that Sherry knew of the babysitter's past, the record does suggest she did little to get to know the babysitter before placing Nicole in her care. In its adjudicatory order, the juvenile court admonished Sherry that her children required "a very high degree of supervision,

higher than the average parent would provide for the average child." Sherry did not heed this admonishment and Nicole was victimized again.

Our legislature has categorically determined that the needs of a child are promoted by termination of parental rights, if the statutory separation period has been satisfied. See Iowa Code §232.116(1)(e)(3); *In re C.B.*, 611 N.W.2d at 494. The requirement is designed to create permanency for the children. *In re C.B.*, 611 N.W.2d at 494. Generally, this statutory presumption alone would warrant termination of parental rights as opposed to continued placement of a child in long-term foster care. Recognizing Nicole's case was not that simple, the juvenile court solicited testimony on the advantages and disadvantages of each option. The court noted Nicole's foster family would be unable to continue in that role until Nicole reached adulthood, necessitating at least one additional foster care placement during Nicole's vulnerable early teenage years. Therefore, the court concluded "foster care would not provide a 'planned permanent living arrangement' for this child as required by the new Adoption and Safe Families Act regulations." The court further concluded "[a]n adoptive family would give Nicole the chance for a permanent, stable placement, which long-term foster care will not."

We are in accord with the juvenile court's reasoned and well-documented opinion. It is true the child's guardian ad litem recommended that Nicole remain in foster care for long-term placement, with continued and expanded family visitation. However, he did so "only by a slim margin." After carefully considering the evidence, the juvenile court found Nicole "will ultimately be

happier with the stability and permanency of adoptive parents as opposed to having a biological mother whom she sees only occasionally." We agree.

We affirm the juvenile court order terminating Sherry's parental rights as to Nicole.

AFFIRMED.