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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

5-067 / 94-1632

IN THE INTEREST OF N.S., A.S., K.S., and A.S.,
Minor Children,

D.C., Mother,

Appellant.

Appeal from the Iowa District Court for Story County, Victor Lathrop, Judge

The mother, D.C., appeals from a district court judgment granting termination of her parental rights to her four minor children. **AFFIRMED.**

Jane Kopp Morris of the Huffer Law Office, Story City, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Molly Fraser, Assistant County Attorney, for appellee

Dario D. Zaffarano, of White & Zaffarano, Ames, guardian ad litem for minor children.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

D C and M S are the parents of four children, N S , born January 19, 1987, A S (Alice), born December 17, 1987, K.S , born July 3, 1989, and A S.(Anita), born July 17, 1990 [1] D C had been severely physically and sexually abused as a child and had developed an alcohol and drug dependency She met M.S when she was twelve years old and moved in with him when she was sixteen The marriage between D C and M.S. was abusive, and M.S developed a serious alcohol problem

The Department of Human Services (DHS) first became aware of the family's situation in 1988. Between 1988 and 1991, DHS documented over seven instances of founded abuse generally based on the denial of critical care The children were ultimately adjudicated children in need of assistance pursuant to Iowa Code section 232.2(6)(b) (1991) Anita was placed in foster care in Ames, while the three older children were placed in foster homes in Polk County.

D C eventually divorced M.S and married R.C., who was recovering from substance abuse DHS began offering a variety of services to both D.C. and R.C. in an attempt to assimilate the children back into the family Despite these efforts, D C. and R.C. failed to make consistent progress, and the State filed a petition requesting termination of their parental rights.

At the April 1993 hearing, the court noted the family had been offered numerous programs, including art therapy, parenting programs, domestic violence treatment, chemical dependency programs, and foster care, but that there had been inconsistent progress The court commented the services had not been appropriately utilized by the parties and the parties acknowledged the children could not be returned at that time. The court, however, also noted D C had taken a number of positive steps in an attempt to better herself,

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[1] "Alice" and "Anita" are fictitious names which will be used throughout the opinion.

specifically separating from M S. Although the court found the statutory grounds for termination had been proven, it dismissed the State's termination petition in order to give D C a second chance to prove the children could be returned to her care The court ordered a gradual reunification period and required D C to accept and cooperate with services previously ordered by the court

Following the hearing, DHS began to increase the number of the children's day visits into D.C.'s and R.C 's schedules. These day visits were gradually increased to unsupervised and overnight visitations. D C. was working full-time, however, and often found it difficult to attend the therapy meetings scheduled with the children. D.C. and R C. also began to experience severe financial difficulties and ultimately lost their apartment. They eventually settled in a motel room until they could afford to obtain an apartment large enough to accommodate the family.

D C. had begun to attend individual therapy sessions and counseling in October 1993. However, by February 1994, she had discontinued her attendance. An in-home counselor continued to meet with D.C. three times per week through February 1994. As the visitations lengthened to unsupervised overnight visits, the children's behavioral problems increased.

D C. cut short a visitation in February 1994, and essentially stopped participating in services except for several in-home counseling sessions. D.C.'s in-home counseling decreased to one or two sessions a week after the visitations ceased in February. The counselor stated D.C became more focused on her personal needs as opposed to the children's needs, particularly after the visitations stopped After the shortened visitation in February, D.C was told her attendance at the children's therapy was necessary to address some behavioral issues arising with the children. D.C. stated she had transportation problems and was working sixty hours per week which did not allow her time to fit the therapy sessions into her schedule. A meeting with D.C was scheduled by DHS in May 1994, to discuss her lack of cooperation. D.C. canceled the meeting. As a result, the State filed a second termination petition.

The termination hearing was held on July 13-14, 1994 At the time, D.C. and R.C were still living in a motel room. R.C had recently lost his job and had begun drinking again. DHS indicated D C had not visited the three oldest children since April 1994, and her last visit with Anita was in March 1994, despite the fact Anita was in foster care in Ames D.C stated, at the hearing, she was interested in terminating her parental rights to Anita, but would like to continue to enjoy parental rights with the other three children. D.C. also stated her nonparticipation in therapy and lack of visitation was due to transportation problems and the refusal of service providers to drive her to her appointments and reschedule appointments for the weekend. The DHS workers testified they required D C. and R.C to obtain transportation for visitations as part of their therapy to instill a sense of responsibility for the children. The children's therapist testified the children developed very aggressive and self-abusive behavior after the visits with D C. and R.C. lengthened. She stated that after the visits were curtailed their behavior stabilized.

The district court agreed with the State that the children's fate had been in limbo for too long and terminated D.C.'s and M.S.'s parental rights. D.C. appeals.

D C. claims the services offered by the DHS were not reasonable. She claims she made numerous attempts to contact DHS workers about rescheduling appointments to fit her work schedule, but she could never reach anyone and when she did the workers did not return her calls. D.C. further claimed she lived in Ames and had only one unreliable car that would not make the trip to Des Moines to attend therapy. She stated she requested transportation from DHS but they would not provide it. D.C. also claims there is not clear and convincing evidence the children could not be returned to her care. She notes the children are still bonded with her, and that generally the visitations were pleasant and free of any abuse.

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.

I. Reasonable services. D.C. contends the services offered by the State have not been reasonable D C makes two arguments in this regard. First, she urges transportation should have been provided to her, particularly after mid-February 1994. Second, D.C states DHS made scheduling appointments more difficult after mid-February 1994.

We believe the source of D.C 's difficulty in attending therapy sessions for herself and the children can be found in her declining commitment to the children, rather than in transportation problems or scheduling difficulties.

Denise Smith, an in-home counselor with D.C. and R.C. from July 1993 to the time of the termination hearing, testified to a rapidly declining interest in parenting skills after January 1994. She stated D C. became more interested in issues involving her relationship with R.C than with any issues involving the children. Smith stated D.C. had difficulty in February seeing where the children fit into her life, and eventually could not understand how to be committed to them in other ways if she could not visit them. Smith believes that in February 1994, and thereafter, D.C. could not see beyond her own personal needs to those of the children.

Lynn Herzberg, the DHS caseworker for D.C.'s family since July 1993, also testified. Herzberg stated D.C. contacted her in May 1994 after the petition was filed. D.C., after discovering Herzberg felt a termination of rights was necessary, discussed the possibility of giving up her parental rights.

We also find D.C.'s greatly diminished contact with all of the children after mid-February 1994 to be strongly indicative of her lack of concern for the children. This is particularly telling in Anita's case, since Anita's foster home was located in Ames.

We find reasonable services have been provided to D.C. In addition, we also note any objections to the services and efforts provided by DHS must be raised prior to the termination proceedings. See In re B.K.K., 500 N.W.2d 54, 57 (Iowa 1993).

II. Statutory criteria. D.C. contends the statutory criteria for a termination of her parental rights has not been met. D.C.'s rights were terminated pursuant to Iowa Code section 232.116(1)(e) (1993) which permits the juvenile court to terminate the parent-child relationship if the court finds 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

We believe the statutory requirements were met. We note that D.C. did not meet the statutory criteria during her first termination petition, but she was given a second chance. We do not believe the record reflects D.C has made any significant strides since the first termination petition. While she may have made nominal progress in the last one-half of 1993, this progress was erased after mid-February 1994. We affirm the district court's ruling that the statutory criteria for the termination of parental rights was met.

III. Best interests of the children. D.C contends a termination of her parental rights would not be in the best interests of her children.

After the statutory limit of twelve months, a case involving the termination of parental rights must be viewed with a sense of urgency. In re L.L., 459 N.W.2d 489, 495 (Iowa 1990). Our supreme court has also warned that "patience on behalf of the parent can quickly translate into intolerable hardship for the children." In re of R.J., 426 N.W.2d 630, 636 (Iowa 1989). A child should not be forced to endlessly suffer the parentless limbo of foster care.

In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). A child should not be forced to await the maturity of their natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

As of the time of the termination hearing, the children had been forced to live in temporary foster homes for a period of almost two years. D.C. has already received a second chance to obtain reunification with her children and has for a second time failed to meet the statutory criteria. D.C.'s actions since mid-February 1994 do not reflect a serious commitment to her children. Further, D.C. has expressed the desire to voluntarily terminate her parental rights to one of the children, Anita, which we believe also reflects a lack of commitment. We find it is in the best interests of the children to terminate D.C.'s parental rights.

AFFIRMED.