

IN THE COURT OF APPEALS OF IOWA

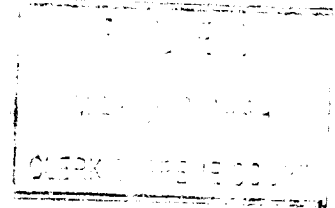
No. 9-225 / 98-0763

Filed May 26, 1999

IN THE INTEREST OF T.D., Minor Child,

R.D., Father,
Appellant,

T.B., Mother,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris,
District Associate Judge.

The mother and father appeal from the order terminating their parental rights.

AFFIRMED.

Heidi L. Noonan-Day of Gottschalk, Shinkle & Noonan-Day, Cedar Falls, for
appellant father.

Mary Kennedy, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee
State.

Sara A. Kersenbrock, Waterloo, guardian ad litem for minor child.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Tami and Romano appeal the order terminating their parental rights. Tami contends the trial court erred in finding the legal grounds for termination had been met and in finding termination was in the best interest of the child. Romano maintains the State did not make reasonable efforts to reunite him with the child, termination was not in the child's best interest, and public policy does not support termination of the parental rights of one parent without also terminating the other parent's rights. We affirm.

Tami, born in April 1980, and Romano, born in June 1978, are the parents of Taiwan, born on May 21, 1996. Both Tami and Romano were students at West High School and were living with Tami's father, Tom.

Taiwan first came to the attention of the Department of Human Services when it was reported Taiwan had bruises on both cheeks of his face, a mark on his neck, and a scratch on the top of his head. A DHS worker described the injuries as follows:

Taiwan had bruises on both of his cheeks, and the bruises were on his cheekbones. It appeared that the bruise may have been caused by someone squeezing his face. The bruise on the left side of his face was larger than the bruise on his right cheek. The areas were darkened and appeared purple in color. Taiwan also had a scrape on the top of his head, which was scabbed and deep red in color. Taiwan also had a scabbed area on the back of his neck. This was approximately the size of a quarter and it was round in shape.

Tami explained the injury on the top of Taiwan's head occurred when Romano was taking him out of the swing. She claimed neither she nor Romano knew how Taiwan's face was injured. Tom suggested Taiwan injured himself while rolling

around in his crib; however, the worker observed Taiwan's crib was heavily padded and it would have been impossible for Taiwan to have injured himself in the manner Tom suggested. The family then blamed the bruising on a six-year-old child. During the assessment process, Tami and Romano were involved in a physical altercation in front of Taiwan which resulted in police officers being called to the home. Witnesses to the altercation stated Tami told Romano he had better not hit Taiwan again because he promised not to do that anymore. The witnesses also reported Tami and Romano frequently fight. The physical abuse was confirmed and the report was registered on September 25, 1996. Tami and Romano declined to accept family services.

More bruises were reported on November 1 and November 5, 1996. The first bruise was unexplained and Tami blamed the day care center for the injury. Romano explained Taiwan was injured the second time when he squirmed out of his arms and struck his head on the metal frame of the crib. The first unexplained bruise resulted in a second registered abuse report dated December 4, 1996. Tami and Romano again declined to accept family-centered services.

On December 6, 1996, DHS began a third assessment based on a report Taiwan had seven unexplained bruises. The worker recorded her observation of these injuries as follows:

It was noted that Taiwan did have a small bruise by his right temple and a reddened area in the middle of his forehead. There was a bruised area on Taiwan's left cheek near his nose, two linear bruises on Taiwan's right forearm, one of which appeared to be bluish in color and the older one was more of a brownish bruise. A brownish bruise was observed

on the back of Taiwan's right upper arm as was a linear blue bruise on his left upper arm. There was also a dark blue bruise on Taiwan's upper left thigh near his scrotum.

The doctors also discovered Taiwan may also have healed fractures on his seventh and eighth ribs. Tami stated she had noticed only two of the injuries and could not explain how any of the injuries occurred.

Taiwan was immediately removed from the home. On December 20, 1996, Taiwan was placed with Tami¹ and DHS retained care, custody, and control of the child. This placement was conditioned upon the provision of family preservation, a visiting nurse, and protective day care services.

In a letter dated January 17, 1997, Dr. Wilbur Smith, a University of Iowa professor in the department of radiology, reported his conclusions based upon a review of x-rays taken of Taiwan in December 1996. In part, Dr. Smith reported:

The radiographs of 12/6/96 show healed fractures of the 7th, 8th, and 9th ribs on the left. These fractures most likely occurred somewhere in early November 1996 and are 5-6 weeks old on the 12/6/96 radiographs. In addition, the 12/6/96 radiographs show evidence of a corner fracture of the left distal femur and probable corner fractures of both tibia. These fractures would be new, having occurred within 7 days of 12/6/96. In addition, as set forth in your note, Taiwan has suffered multiple soft tissue injuries including bruises to the head, a black eye, a thigh bruise, and cheek bruises.

Clearly, Taiwan is being subjected to repeated abusive trauma. In light of the fractures, there must be considerable force applied to the baby and *this baby is in danger of being killed* if appropriate intervention is not taken. (Emphasis added.)

¹ Romano was no longer living with Tami's family. It is not clear when he moved to another residence.

The court approved an Application for Order of Temporary Removal on January 29, 1997. The removal hearing was held on January 31, 1997, and the care, custody, and control of Taiwan was ordered to remain with DHS. On February 1, 1997, Taiwan was placed in foster care in the Carr home. The Carr's were willing to allow Tami nightly visits starting February 4, 1997. Tami took advantage of this arrangement once, on February 5. When Tami was informed she could not visit Taiwan every night, she responded "okay." Tami and Romano did receive two-hour supervised visits with Taiwan three times a week.

The CINA adjudicatory hearing was held on February 27, 1997. The court found Tami was a sixteen-year-old child with a diagnosed conduct disorder and a juvenile history. Tami was found to have taken no action to protect Taiwan from the repeated physical abuse. Because Tami continued to reside with Tom, the court took judicial notice of the juvenile court files relating to four of Tom's children, including Tami. The court also noted despite the receipt of supervisory services since 1988, Tom remained unable to effectively parent his children. Tom has denied knowledge of abuse or the assaultive behavior between Tami and Romano. He told DHS workers he would report any suspicious injuries; yet as recently as December 1996, Tom failed to regularly report violations of curfew by his son, Shane, nor did he report the pistols he discovered under Shane's pillow. The court went on to state it would not consider returning Taiwan to Tami's custody unless she was in a supervised living situation outside her father's home *in a placement such as the House of Hope* in Waterloo.

Taiwan was adjudicated to be a child in need of assistance within the meaning of Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The court also ordered Romano have no contact with Taiwan and no contact or communication with Tami.

Tami had two interviews with the House of Hope and rented several apartments with friends. In a letter to the court dated April 8, 1997, Tami asked to have Taiwan returned to her, admitted Romano was the perpetrator of the abuse, stated she was willing to keep Taiwan and herself away from Romano, and agreed to daily supervision. In early May, it was recommended Taiwan be integrated back into Tami's home because she had a suitable apartment, positive visits, full-time employment, and was making progress. By late May, DHS learned Tami had been fired from her job, had a boyfriend, Dameon, living with her, and Romano had been calling her in violation of the no contact order.

At the June review hearing, the court found Tami had been deceitful and manipulative with providers, needed individual counseling and parent skill development, and she had failed to seriously pursue placement in a supervised living situation for herself and Taiwan. Taiwan remained in foster care and the no contact orders were continued.

By November 1997, Tami had quit school, done some work towards her GED, had held three different jobs, and had been unemployed for substantial periods of time. Tami had incurred seven law violations since May 1997, five of which were waived to adult court, involving three bad checks, leaving without paying for gas she

had pumped, and interference with official acts. Tami also dropped at least one dirty UA. She had become pregnant by Dameon, who later was incarcerated for burglary. She and Romano had been violating the no contact order; at one point, Romano threatened to kidnap Taiwan.

Tami and Romano received or were offered numerous services including family preservation, family-centered services such as parent skill development and community assistance, Parent Connection, psychological evaluation, individual therapy, and a visiting nurse. During the proceedings, Romano never called to request any services and apparently asked only once about visitation, and never requested to have the no contact order lifted.

Tami failed to take advantage of opportunities to spend more time with Taiwan. She finally agreed to enter the House of Hope in December 1997. However, she was asked to leave after two months because she had too many overnight absences and had remained in contact with Romano.

The termination hearing was held on March 13, 1998. At that time, Tami was again living with her father, was still blaming the injuries on the day care center, and admitted she had recently violated the no contact order. Romano invoked his Fifth Amendment privilege not to testify at the hearing. Following the termination hearing, the judge found, in part:

Tami . . . has been unable and at times quite unwilling to pursue the necessary courses which would permit reunification.

[Tami], because of her course of action, is unable to provide the economic stability, permanency of residence or protection for the child

that would enable the Department of Human Services or this court to return the child to [Tami] at this time.

....
[Tami] has repeatedly demonstrated a disturbing inclination to pursue a relationship with Romano . . . , the primary source of physical abuse to the child in this case

Tami's parental rights were terminated under Iowa Code sections 232.116(1)(c), 232.116(1)(g), and 232.116(1)(h). Romano's parental rights were terminated under sections 232.116(1)(d), 232.116(1)(g), and 232.116(1)(h). Tami and Romano appeal.

I. STANDARD OF REVIEW. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1997).

II. TAMI'S APPEAL. Tami contends the trial court erred in finding the legal grounds for termination had been met under Iowa Code sections 232.116(1)(c), 232.116(1)(g), and 232.116(1)(h), and in finding termination was in Taiwan's best interest. We disagree.

Section 232.116(1)(c) requires a finding that “[s]ubsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of such services.” Iowa Code § 232.116(1)(c)(2).

Section 232.116(1)(g) requires a finding that “[t]here is clear and convincing evidence that the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time.” Iowa Code § 232.116(1)(g)(4).

Section 232.116(1)(h) requires a finding that “[t]here is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes imminent danger to the child,” Iowa Code § 232.116(1)(h)(2), and a finding that “[t]here is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.” Iowa Code § 232.116(1)(h)(3).

As discussed above, Tami received and was offered a number of services. She has known since the CINA adjudication that she needed to find a supervisory living situation outside her father’s home. Tami has not shown a commitment to find such a living situation. She had several interviews with the House of Hope but chose not to enter the program until December 1997. Tami was asked to leave after only two months and moved back to her father’s house knowing she would not receive custody of Taiwan.

Tami has continuously violated the no contact order as recently as two weeks before the termination hearing knowing the no contact order was still in place. At the hearing, Tami continued to feel she was a victim, minimize Taiwan's injuries, blame them on the day care center, and believe Romano did not abuse Taiwan.

We find this constitutes clear and convincing evidence to support findings that the circumstance which led to the adjudication continues to exist, Taiwan cannot be returned to Tami because she cannot protect him from physical abuse, and the circumstances constitute an imminent danger and would not be corrected by receipt of services within a reasonable period of time. Therefore, we conclude Tami's parental rights were properly terminated under Iowa Code sections 232.116(1)(c), 232.116(1)(g), and 232.116(1)(h).

Even though the grounds for termination have been proved by clear and convincing evidence, the court is not required to terminate parental rights if it finds the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *Id.* We must consider a child's long-range and immediate best interests. *Id.*

The evidence shows Tami and Taiwan have a bond. However, Tami has returned to her father's home, has continued to violate the no contact order, and allows Romano access to Taiwan. She does not believe Romano physically abused Taiwan and, therefore, will likely continue allowing Romano access to Taiwan. Romano has not received any services regarding his physical abuse of Taiwan; thus, it is unlikely his abusive behavior has changed. Finally, we emphasize Dr. Smith's conclusion that Taiwan was in danger of being killed if appropriate intervention was not undertaken. Tami is willing to expose Taiwan to continuing physical abuse which could result in his death. No matter how strong a bond Tami and Taiwan have, this is an unacceptable situation. We find there is clear and convincing evidence it is not in Taiwan's best interest to be returned to Tami and conclude it was not error to find it was in Taiwan's best interest to terminate Tami's parental rights.

III. ROMANO'S APPEAL. Romano apparently does not deny the grounds for termination of his parental rights have been proven by clear and convincing evidence. He does maintain the State did not make reasonable efforts to reunite him with the child, termination was not in the child's best interest, and public policy does not support termination of the parental rights of one parent without also terminating the other parent's rights. We disagree.

The State must make reasonable efforts to reunite parents and children prior to termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). Romano should have demanded these services prior to the termination hearing. *In re*

B.K.K., 500 N.W.2d 54, 57 (Iowa 1993). Romano was offered services but he never requested family-centered services, parental skill development, or evaluations of any kind. He did not ask to have the no contact order lifted; he simply repeatedly violated it. Romano made only one request for visitation. We conclude the State did make reasonable efforts to reunite Romano and Taiwan. *See e.g. In re T.T.*, 541 N.W.2d 552, 556-557 (Iowa App. 1995).

Even though the grounds for termination have been proved by clear and convincing evidence, the court is not required to terminate parental rights if it finds the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). As Romano has not maintained significant and meaningful contact with Taiwan, the consideration under section 232.116(3)(c) clearly does not apply to this case. *See In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996).

Because we affirm the termination of both Tami's and Romano's rights, we need not address Romano's contention public policy does not support termination of the parental rights of one parent without also terminating the other parent's rights.

For these reasons, we affirm the order terminating the parental rights of Tami and Romano.

AFFIRMED.

No. 98-0763. [9-225] IN RE T.D.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris, District Associate Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Mahan, JJ. Opinion by Mahan, J. (12 pages \$4.80)

Tami and Romano appeal the order terminating their parental rights. Tami contends the trial court erred in finding the legal grounds for termination had been met and in finding termination was in the best interest of the child. Romano maintains the State did not make reasonable efforts to reunite him with the child, termination was not in the child's best interest, and public policy does not support termination of the parental rights of one parent without also terminating the other parent's rights. Founded reports of physical abuse suffered by their son, born in May 1996, were registered in September and December 1996. A third assessment was begun in early December 1996 based on a report the child had seven unexplained bruises. At that time, doctors discovered the child may also have two healed rib fractures. A University of Iowa professor in the department of radiology reviewed x-rays taken of the child, found additional bone injuries, and concluded the child "is being subjected to repeated abusive trauma. In light of the fractures, there must be considerable force applied to the baby and *this baby is in danger of being killed* if appropriate intervention is not taken." The child was placed in foster care in February 1997; the CINA adjudicatory hearing was held later that month. The court found Tami took no action to protect the child from repeated physical abuse and stated it would not consider returning the child to Tami's custody unless she was in a supervised living situation outside her father's home in a placement such as the House of Hope. Romano was ordered not to have contact with either Tami or the child. By November 1997, Tami had quit school, done some work towards her GED, had held three different jobs, and had been unemployed for substantial periods of time. Tami had incurred seven law violations since May 1997, five of which were waived to adult court. Tami also dropped at least one dirty UA, and had become pregnant by a new boyfriend, who later was incarcerated for burglary. She and Romano had been violating the no contact order. Tami and Romano received or were offered numerous services including family preservation, family-centered services such as parent skill development and community assistance, Parent Connection, psychological evaluation, individual therapy, and a visiting nurse. **OPINION HOLDS: I. Tami's Appeal.** Tami received and was offered a number of services. She has known since the CINA adjudication that she

needed to find a supervisory living situation outside her father's home. Tami has not shown a commitment to find such a living situation. She had several interviews with the House of Hope but chose not to enter the program until December 1997. Tami was asked to leave after only two months and moved back to her father's house knowing she would not receive custody of the child. Tami has continuously violated the no contact order as recently as two weeks before the termination hearing knowing the no contact order was still in place. At the hearing, Tami continued to feel she was a victim, minimize the child's injuries, blaming them on the day care center, and believing Romano did not abuse the child. We find this constitutes clear and convincing evidence to support findings that the circumstance which led to the adjudication continues to exist, the child cannot be returned to Tami because she cannot protect him from physical abuse, and the circumstances constitute an imminent danger and would not be corrected by receipt of services within a reasonable period of time. Therefore, we conclude Tami's parental rights were properly terminated under Iowa Code sections 232.116(1)(c), (g), and (h). The record shows Tami is willing to expose the child to continuing physical abuse which could result in his death. No matter how strong a bond Tami and the child have, this is an unacceptable situation. We find there is clear and convincing evidence it is not in the child's best interest to be returned to Tami and conclude it was not error to find it was in the child's best interest to terminate Tami's parental rights. **II. Romano's Appeal.** Romano was offered services but he never requested family-centered services, parental skill development, or evaluations of any kind. He did not ask to have the no contact order lifted; he simply repeatedly violated it. Romano made only one request for visitation. We conclude the State did make reasonable efforts to reunite Romano and the child. As Romano has not maintained significant and meaningful contact with the child, the best interest consideration under section 232.116(3)(c) clearly does not apply to this case. Because we affirm the termination of both Tami's and Romano's rights, we need not address Romano's contention public policy does not support termination of the parental rights of one parent without also terminating the other parent's rights.