

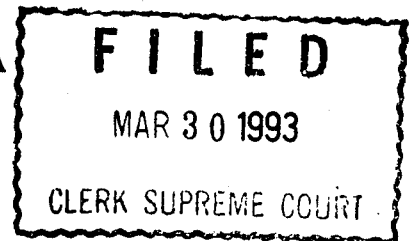
IN THE COURT OF APPEALS OF IOWA

No. 2-683 / 92-1424

IN THE INTEREST OF J.W.W.
and M.R.W., Minor Children,

M.W., Mother,

Appellant.



Appeal from the Iowa District Court for Polk County,
Larry J. Eisenhauer, Associate Juvenile Judge.

The mother appeals a juvenile court's decision
terminating her parental rights to her two children.

AFFIRMED.

Jeanine Gazzo of Coppola & Gazzo, Des Moines, appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Judy A. Sheirbon,
Assistant Attorney General, and Heather Dickinson, Assistant
County Attorney, for appellee.

Susan Conn, guardian ad litem, for the children.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Appellant mother appeals a juvenile court order terminating her parental rights to children born in December, 1988 and November, 1991. We affirm the termination of the mother's parental rights.

The mother consented to the older child's removal from her care on August 27, 1990, and on November 1, 1990, he was found to be a child in need of assistance. Services were offered the mother who was incarcerated in July, 1991. While in prison the mother gave birth to the second child on November 25, 1991. He was placed in foster care on November 27, 1991. On January 15, 1992, he was found to be a child in need of assistance.

On March 23, 1992, a petition was filed to terminate the mother's and father's parental rights to the older child.

On June 30, 1992, the State filed a petition to terminate the mother's and father's parental rights to the second child.

On July 1, 1992, the day after the second petition was filed, the matter came on for hearing. The mother appeared with an attorney and consented to having the hearing address the issues raised in both petitions. Neither father was notified of the hearing and neither father was served with notice. Affidavits were filed stating a diligent search had been made to locate both men. The juvenile court found notice to both fathers "should be dispensed with."

The court found the State had proved the allegation of Iowa Code section 232.116(1)(g) (1991) as to both children, the children having had, among other things, their custody transferred from their mother for six consecutive months. Their parental rights were terminated because they could not be returned to their mother's care.

The court found the State proved the fathers had abandoned the children under Iowa Code section 232.116(1)(b) (1991).

The mother contends there is not clear and convincing evidence the older child cannot be returned to her custody. We disagree. The mother has a history of substance abuse and she has failed to follow the requirement of the programs prescribed for her. She now claims the prescribed programs were not tailored to her needs and her lack of financial resources prevented her from attending some of the prescribed programs.

It is unfortunate when, as here, programs prescribed do not assist parents in reclaiming their children. We cannot on this record say the programs were suited for the mother's problems or other programs would have been more satisfactory. Reasonable services were offered and the mother should have challenged the services when ordered and she and her attorney should have alerted the court to her needs. The reasonable efforts requirement provides an attorney a strong tool for enforcing rights to services and

family integrity. See In re B.L., 491 N.W.2d 789, 793 (Iowa App. 1992); In re M.D.S. 488 N.W.2d 715, 720 (Iowa App. 1992). The mother did not challenge the plan when offered. She has failed to comply with the plans and there is clear and convincing evidence she continues to use substances that would substantially affect her ability to parent. See In re T.C., 489 N.W.2d 53, 55-56 (Iowa App. 1992). We affirm the order terminating her parental rights to the older child.

The mother next complains the court did not have jurisdiction to terminate her parental rights and the statutory grounds for termination were not met for the younger child.

The trial court found the child's custody had been transferred from his mother's care for the last six consecutive months. It is admitted this finding was erroneous. At the time of the hearing on July 1, 1992, the child had only been transferred from his mother's care for five months and twelve days.

The State concedes the error, but argues the case should be affirmed because the statute changed on July 1, 1992, the day of the hearing and under the changed section, the child had been outside his mother's care for sufficient time.

The petition clearly was filed and tried under the 1991 code section. The trial court's ruling states the ground under the 1991 code and finds it was met.

A parent facing state intervention in his or her family relationships has a right to demand the process employed by the state meets due process requisites. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). The parent must be given sufficient notice of both the nature of the complaint and the time for the hearing. Id. Statutes providing for termination of parental rights must not be vague and must clearly define expected conduct. Alsager v. District Court, 406 F. Supp. 10, 17-21 (S.D. Iowa 1975). We reject the State's argument that the change in the statute corrected the error.

A parent has the right to have adequate notice and opportunity to be heard on a statutory ground claimed to support termination.

A careful reading of the record convinces us the mother waived the issue and cannot raise it for the first time on appeal. See Connor v. State, 362 N.W.2d 449, 457 (Iowa 1985).

We affirm the termination of the mother's parental rights to both children.

AFFIRMED.