

IN THE COURT OF APPEALS OF IOWA

No. 6-515 / 06-0831

Filed July 12, 2006

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

M.V., Intervenor,

**V.V., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe Smith, District Associate Judge.

Mother appeals the termination of her parental rights. **AFFIRMED.**

Andrea Flanagan of Sporer & Ilic, P.C., Des Moines, for appellant mother.

Carmen Janssen, West Des Moines, for father.

Scott Hunter, Des Moines, for intervenor.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

J. Karnale Manuel of Drake Legal Clinic, Des Moines, for minor child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.

Valerie appeals the termination of her parental rights. She argues the district court erred in terminating her rights because (1) the State failed to meet its burden of proof to terminate under Iowa Code section 232.116(1)(d) (2005); (2) the State failed to prove by clear and convincing evidence all four elements to terminate under section 232.116(1)(f); and (3) termination is not in her child's best interests. We affirm.

I. Background Facts and Proceedings

Valerie is the mother of N.C., born in December 1995. N.C. was removed from Valerie's care on January 5, 2005, after Valerie tested positive for methamphetamine and marijuana. She was placed with her legal father, Shane, where she remains. N.C. was adjudicated a child in need of assistance (CINA) in February 2005.

N.C.'s experience in her mother's care was chaotic. In anticipation of a court-ordered bonding assessment with her mother, she wrote the following list of experiences in order to remember to discuss them:

- Abusing my animals
- Feeding me moldy food
- Birthday cake with naughty word Happy Birthday little bitch
- Moving all the time
- Having sex in front of me
- Telling me Shane is not my dad
- Forcing me to steal for you
- Doing drugs in front of me
- Lying to me
- Saying bad things about [Shane's wife]
- Leaving me alone a lot
- Taking me to weird parties where you got drunk
- Not taking care of me when I was sick
- Putting fire crackers on my dogs and cats and then laughing
- Never helping me with school

Not caring if I missed school
Not making meals for me
Not supervising fireworks when I got hurt
Not taking care of me when I had a concussion
Making me live in filthy houses
Taking me on my birthday and taking me around drugs
Not helping me with my dog bite

After N.C.'s removal, Valerie left the state and lived in Missouri until approximately June 2005. She visited N.C. three times throughout April and May while she was out-of-state. Upon her return to Iowa, Valerie entered and completed in-patient drug treatment.

During one of her visits in April or May 2005, Valerie told N.C. that Shane was not her biological father. In June 2005 Valerie called Iowa Department of Human Services (DHS) officials to tell them Shane was not N.C.'s biological father. N.C. also reported to her therapist what Valerie had told her. N.C.'s therapist recommended visitation cease for a period of time. In July 2005 Valerie filed an application for paternity testing and an application for visitation with N.C. On August 17, 2005, the court ordered joint counseling sessions to begin between N.C. and Valerie in order to set an appropriate visitation schedule. Paternity test results confirmed Shane is not N.C.'s biological father on August 22, 2005. The next day Marlene, Valerie's mother and N.C.'s grandmother, filed a motion to intervene and modify placement, requesting custody be granted to her. In September 2005 the court granted Marlene's request to intervene, but declined to modify placement. DHS suspended visitation between N.C. and Valerie in November 2005. The visitation was suspended on request from N.C.'s therapist, who noted marked deterioration in N.C.'s emotional status after joint therapy sessions with her mother began.

The State filed a petition to terminate Valerie's parental rights on December 19, 2005. On December 20, 2005, the court ordered Valerie's visitations to cease and continued N.C.'s permanency hearing to coincide with the trial to terminate Valerie's parental rights. In January, 2006 Valerie filed motions to reconsider requesting visitation and to dismiss Shane from the suit. Both motions were denied.

After several continuations, a hearing was held on April 10, 2006. At the hearing, three expert witnesses testified about N.C.'s relationships with the adults in her life and the possible effects of placement options. Dr. Sheila Pottebaum, N.C.'s therapist, testified that N.C.'s mental state is fragile. She stated that moving N.C. to her grandmother's house would be extremely disruptive. She also stated that what N.C. needs most is permanency, and that once she is able to rely on remaining with her legal father, she may be able to resolve her relationships with her grandmother and mother. Eileen Swoboda conducted a bond assessment between Valerie and N.C. She also testified that N.C.'s greatest need is permanency. She recommended that N.C. remain with her father. Dr. Randal Reynolds performed a bond assessment between Marlene and N.C. His assessment dealt specifically with Marlene and N.C. and did not address permanency.

The district court terminated Valerie's parental rights on May 5, 2006. Valerie appeals.¹

¹ The appeal by intervenor Marlene has been dismissed.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the child. *Id.* In determining the child's best interests, we look to both long-term and immediate needs. *Id.*

III. Merits

First, Valerie argues the State failed to meet its burden of proof to terminate her rights under section 232.116(1)(d). In order to terminate parental rights under that section, the State must show:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent 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 services.

Iowa Code § 232.116(1)(d).

Valerie points out that her drug use and addiction led to N.C.'s CINA adjudication. Though she refused services for nearly six months after N.C. was removed, she has since completed drug treatment and maintained sobriety. However, N.C.'s reaction to even therapist-supervised contact with her mother has been extreme. Testimony from both Pottebaum and Swoboda indicate she suffers mental anxiety and emotional stress from the encounters. It is not

necessary that the initial harm for which a child is removed be the same harm on which termination is based. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Because it is clear that N.C. will suffer mental injury if she is returned to Valerie, we conclude the State proved its case under section 232.116(1)(d).

Second, Valerie argues the State failed to show each element of section 232.116(1)(f) by clear and convincing evidence. In order to terminate parental rights under that section, the State must show:

- (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 children cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(f).

Specifically, Valerie takes issue with the State's proof under the third and fourth element. She argues that since N.C. was placed with her legal father, she was not "removed" from her parents. She also argues there is not evidence showing N.C. cannot be returned to her custody.

We have already noted that section 232.116 allows the termination of only one parent's parental rights. See *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). In other words, "the singular includes the plural, and the plural includes the singular." *Id.* Finally, Valerie herself testified at the hearing that she was not asking for custody of N.C.:

Q. What are you asking the Court to do today on your behalf? A. Not to terminate my rights.

Q. Are you asking for custody? A. No.

Q. Why are you not asking for custody? A. I believe that me and [N.C.] have a lot of issues to work out.

Children should not have to wait forever for their parents to work out their own issues. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Again, it was made clear by both Pottebaum and Swoboda that N.C. craves permanency. Given her reactions to visits with her mother, we conclude there was clear and convincing evidence showing she cannot be returned to her mother's care.

Third and finally, Valerie argues it is not in N.C.'s best interests that her parental rights be terminated. We disagree. Valerie's past parental conduct may be considered in our evaluation of her current fitness to be a parent. See *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). After N.C. was removed, she moved out of state for nearly six months and refused to participate in services. When she finally contacted DHS, she used her visits to malign Shane and his wife. She told N.C. that Shane was not her biological father, upsetting an already fragile child even more. She attempted to shoulder Shane, a stable influence in N.C.'s life, completely out of the picture. Valerie's choices and her interactions with N.C. since removal indicate a refusal to act in N.C.'s best interests. We conclude there is overwhelming evidence showing the termination of Valerie's parental rights is in N.C.'s best interests.

The district court ruling is affirmed.

AFFIRMED.