

IN THE COURT OF APPEALS OF IOWA

No. 8-300 / 08-0307
Filed May 14, 2008

**IN THE INTEREST OF M.K., D.J. and M.K.,
Minor Children,**

**E.P.J., Father of D.J.,
Appellant,**

**A.K., Father of M.K. and M.K.,
Appellant,**

**M.A.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A mother and a father each appeal from a juvenile court order terminating
their parental rights. **AFFIRMED ON BOTH APPEALS.**

Barbara K. Wallace of Cartee & Clausen Law Firm, P.C., Davenport, for
appellant father of M.K. and M.K.

Lauren Phelps, Bettendorf, for appellant father of D.J.

Carrie E. Coyle, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee.

Angela Reyes, Davenport, guardian ad litem for minor children.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

MILLER, P.J.

Mickayla is the mother of four-year-old Mykiah (also referred to at places in the record as “Mikiah”), three-year-old Mykel, and one-year-old Darnell (“the children”). Alexander is Mykiah’s and Mykel’s father. Mickayla and Alexander appeal from a February 2008 juvenile court order terminating Mickayla’s parental rights to the children and Alexander’s parental rights to Mykiah and Mykel.¹ We affirm on both appeals.

The family, then consisting of Mickayla, the children, and Darnell’s father, came to the attention of the Iowa Department of Human Services (DHS) in June 2006 as a result of a recent incident of domestic violence between Darnell’s father and Mickayla that had endangered three-month-old Darnell. It appears that Mykiah and Mykel were at the time, and had been at many times, in the care of paternal relatives. Services were offered and began.

Mickayla has a serious seizure disorder, resulting in seizures that last up to ten minutes and cause her injuries. Her disorder is the result of a head injury inflicted by her father when she was younger. When Mickayla has a seizure she is unable to care for the children, or even care for herself. Following initiation of services Mickayla and the children moved in with her father, who has a history of substance abuse and crime.

In September 2006 Mickayla agreed to a safety plan that included a requirement she not care for the children without another responsible adult present. Almost immediately she violated that requirement, and by agreement in mid-September the children were removed from her physical custody and placed

¹ The order also terminated the parental of Darnell’s father, and his appeal was dismissed by order of our Supreme Court.

in family foster care. The children have thereafter remained in that same foster home.

Mickayla was inconsistent in visiting with the children, offering various reasons such as oversleeping, not having a ride, and experiencing seizures. During those visits that she did attend, she was unable to consistently or effectively discipline the children. Visits were decreased from one and one-half hours twice per week to two hours once per week. In addition, Mickayla made limited progress with services. Late in 2006 the DHS requested that a child in need of assistance (CINA) petition be filed. A petition was filed and in February 2007 each of the children was adjudicated a CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2007) (child who has suffered or is imminently likely to suffer harmful effects as a result of failure of a parent to exercise a reasonable degree of care in supervising the child). The basis for the adjudication was Mickayla's inability or failure "to provide appropriate care and supervision for her children due to [her] seizure disorder, parenting deficiencies, poor decision making, and violence in the home between [Darnell's father and Mickayla]." Custody of the children was transferred to the DHS for continued placement in foster care.

By March 2007 Mickayla and Darnell's father were making some progress in services, and in May visits were lengthened and became partially unsupervised. However, Mickayla again began violating the safety plan by not having another responsible adult present. An additional concern, present from the outset of DHS involvement with the family, was the lack of independent, stable housing. As of October 2007 Mickayla and Darnell's father were no longer able to live with his mother and they moved to a motel room. Visits were of

necessity moved to the service provider's office, and Mickayla's attendance became infrequent and sporadic again.

In October 2007 the State filed a petition for termination of parental rights. Following a hearing the juvenile court terminated Mickayla's parental rights to the children pursuant to Iowa Code sections 232.116(1)(e) (child adjudicated CINA, child removed at least six consecutive months, parent has not maintained significant and meaningful contact during previous six consecutive months and has made no reasonable efforts to resume care of the child), (f) (child four or older, adjudicated CINA, removed twelve of last eighteen months, cannot be returned at present without remaining a CINA), (h) (child three or younger, adjudicated CINA, removed six of last twelve months, cannot be returned at present without remaining a CINA), and (k) (child adjudicated CINA and custody transferred for placement, parent has chronic mental illness and has been repeatedly institutionalized for mental illness and presents a danger to self or others, parent's prognosis indicates child cannot be returned to parent within reasonable period of time). The court terminated Alexander's parental rights to Mykiah and Mykel pursuant to those same four provisions, plus section 232.116(1)(b) (abandonment).

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Alexander claims the juvenile court erred in overruling Mickayla's motion to continue the termination hearing, in which he joined.² We find no merit to this claim.

A guardian ad litem for the children left the private practice of law and was replaced by a new guardian ad litem about two months before the termination hearing. The new guardian ad litem had not had time to complete an investigation on the case before the hearing. At the outset of the hearing Mickayla moved to continue the hearing to allow the guardian ad litem to fully investigate, arguing that "a couple more months" would not negatively affect the children, who had been in foster care for seventeen months. Alexander joined in the motion. The juvenile court overruled the motion, stating a belief that delaying the matter had the potential for harm to the children and it would be more prudent to proceed but then allow the guardian ad litem to complete her investigation and submit a written report and any recommendations. The children's guardian ad litem participated in the hearing, questioning witnesses presented by the State, by Mickayla, and by Darnell's father. At the conclusion of the January 2008 hearing the court allowed the guardian ad litem until February 7 to submit a report and any recommendations. The guardian ad litem filed a written report and recommendation on February 6, 2008.

"Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa Ct. App. 1990). A motion for continuance in a juvenile proceeding is to be granted only for good cause. Iowa Ct. R. 8.5.

We review a motion for continuance under an abuse of discretion standard and will only reverse if injustice will result to the party

² Mikayla does not claim the juvenile court erred in overruling the motion.

desiring the continuance. Denial of a motion to continue must be unreasonable under the circumstances before we will reverse.

In re C.W., 554 N.W.2d 279, 281 (Iowa Ct. App. 1996) (citations omitted).

Alexander has been in prison through the entire duration of this case and the underlying CINA proceeding. Although the record is not completely clear on the point, it suggests he will remain incarcerated for many years to come. Alexander makes no claim that he was in any manner prejudiced by the juvenile court overruling his motion. We conclude the denial of a continuance was not unreasonable, resulted in no injustice to Alexander, and did not constitute an abuse of discretion.

Alexander claims the juvenile court “erred in taking judicial notice of or receiving into evidence the report of the guardian ad litem . . . when the author . . . was not available for cross examination at the termination hearing or any other hearing.” “Even issues implicating constitutional rights must be presented to and ruled on by the district court in order to preserve error for appeal.” *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). Nothing in the record suggests that Alexander objected to the juvenile court accepting and considering the report and recommendation of the guardian ad litem. He has thus not preserved error on this issue and we decline to further address it.

Mickayla claims the juvenile erred in relying in part on Iowa Code section 232.116(1)(k) to terminate her parental rights, as “there is no proof or evidence of chronic mental illness suffered by the mother.” We agree. This does not end our consideration of Mickayla’s appeal, for “[w]hen the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to

terminate under one of the sections cited by the juvenile court to affirm.” *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Mickayla claims the juvenile court erred in finding the State proved the grounds for termination pursuant to Iowa Code sections 232.116(1)(f) and (h). She also claims termination was not warranted because additional time was needed for her to effect a successful reunification with the children. We discuss these two claims together.

The first three of the four elements of both section 232.116(1)(f) and section 232.116(1)(h) were clearly proved and cannot reasonably be in dispute. We focus on the fourth element of each. This element is proved when the evidence shows the child cannot be returned to the parent without remaining a CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child’s removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Mickayla has a long history of serious seizures. They are brought on by a variety of sources and events, including but not necessarily limited to computers, pain, stress, exposures to chemicals or scents such as cleaning agents, and lack of sufficient sleep. Her seizures are to a certain extent controlled or limited by prescribed medication, but only if she faithfully and timely takes the medication. Mickayla’s current medication is the best she has ever been prescribed for controlling her seizures. However, her longest time between seizures while taking it has been two months, and she experienced a seizure about two weeks

before the termination hearing. Mickayla has a history of not appropriately taking the required medication unless monitored and supervised in doing so.

In October 2007 Mickayla stopped visiting the children and stopped contact with the DHS and service providers. A month passed before she had a visit, and it came about only because a service provider encountered her by chance and then arranged a visit. It was then another two weeks before Mickayla could be reached, and more than a month passed between her late November visit and the next visit in late December.

Mickayla has in the past depended on Alexander's parents for assistance in caring for Mykiah and Mykel, on Darnell's father's family for housing, and on Darnell's father for assistance with the children and her medication. Darnell's father's family can no longer provide housing. Darnell's father most recently abused Mickayla in November 2007, was in jail for that and numerous other criminal charges at the time of the termination hearing, and was thus no longer available to help with the children or medication. The juvenile court found in part that Mickayla did not have a good support system either through her own family or otherwise.

Throughout the CINA and termination cases Mickayla has been unable to establish any independent, stable housing for herself and the children. At the time of the termination hearing she resided in a domestic violence shelter, and relied heavily on its staff to make certain she appropriately took prescribed medication.

At the time of the termination hearing Mickayla had been employed for about six weeks, working for thirty to thirty-five hours per week. Her current job

was, however, her fifth or sixth job in about seventeen months, and she had held the others for only brief periods of time.

In summary, at the time of termination hearing Mickayla had not demonstrated any sustained stability in housing, employment, ability to properly take needed medication without direct monitoring, or ability to then resume care of the children. She requested an additional three to six months to demonstrate that her children could be safely returned to her.

We conclude the State proved the children could not be returned to Mickayla at the time of the termination hearing without being subject to the imminent likelihood of neglect or a failure to exercise a reasonable degree of care and supervision that would cause the children to remain CINA. We need not and do not determine whether the State also provide the section 232.116(1)(e) grounds for termination of her parental rights. We further conclude the juvenile court properly denied Mickayla's request for additional time. See, e.g., *C.B.*, 611 N.W.2d at 694 (“[T]he legislature incorporated a twelve-month limitation for children in need of assistance aged four and up, and a six-month limitation for children in need of assistance aged three and below.”).

Mickayla also claims termination of her parental rights was in error, as it was not in the children's best interest. She argues that she and the children have a significant relationship, and terminating their relationship could be devastating to the children.

A strong parent-child bond is a special circumstance which militates against termination when statutory grounds have been satisfied. Iowa Code § 232.116(3)(c); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Yet it is not

an overriding consideration, but merely a factor to consider. *N.F.*, 579 N.W.2d at 341. Section 232.116(3) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. 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.*

The children have been removed from Mickayla for almost one and one-half years, and have been in the same foster home that entire time. They could not be returned to Mickayla at the time of the termination hearing, or within a reasonable time thereafter. The children need security and permanency, and need them now rather than at some indefinite future time. Although Mickayla has a bond with the children, the children are also bonded to their foster mother. They are doing well in their foster home, which is a “foster-to-adopt” home, and their foster mother is interested in and willing to adopt them. We conclude, as the juvenile court did, that termination of Mickayla’s parental rights is in the children’s best interest.

AFFIRMED ON BOTH APPEALS.