

IN THE COURT OF APPEALS OF IOWA

No. 0-836 / 10-0848
Filed November 24, 2010

**IN THE INTEREST OF A.A., D.A., and L.G.,
Minor Children,**

P.G., Father of L.G.,
Appellant,

K.A.A., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A mother and a father separately appeal from the order terminating their parental rights. **AFFIRMED.**

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant father of L.G.

Mary Kennedy, Waterloo, for appellant mother.

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

Laura Range, Waterloo, for father of A.A. and D.A.

Linnea Nicol of the Juvenile Public Defender's Office, Waterloo, for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

A mother and father appeal the termination of their parental rights. The mother, Kim, has three children: A.A. born in November 2003, D.A. born in June 2005, and L.G. born in October 2007. Phillip is the father of L.G. The father of A.A. and D.A. did not appeal. Kim argues that the evidence was insufficient to terminate her parental rights. Phillip contends the evidence did not support the grounds to terminate and further that it was in L.G.'s best interests to maintain the bond with his father. Because both parents are incarcerated, and we find the mother is unable to remain drug-free and Phillip is unable to remain sober, sufficient evidence exists to terminate parental rights. The evidence also does not require withholding termination to preserve the father-child bond. Accordingly, we affirm.

Kim is the mother and Michael is the father of A.A. and D.A. From July 2004 through April 2006, there were four founded child abuse reports naming Kim responsible for denial of critical care for either the presence of an illegal drug in the child or failure to provide supervision. Michael was also found to be the perpetrator of child abuse. A.A. and D.A. were removed from Kim's care and placed in foster care from May 2006 until May 2007 because of Kim's substance abuse and the substance abuse and domestic violence by her then-husband Michael.

After the Iowa Department of Human Services (DHS) provided numerous services to the family and Kim completed substance abuse treatment, the children were returned to her in mid-2007. In October 2007, Kim had a son, L.G.,

whose father is Phillip. Kim and the children continued to participate with services through December 2007, at which point the court action was terminated.

In March 2008, Kim began receiving services on a voluntary basis following a February 2008 incident where she was the victim of domestic violence perpetrated by J.H. As a result, J.H. was charged with kidnapping, assault with intent to inflict serious injuries, and assault causing bodily injuries. A.A. and D.A. were present during the incident; L.G. was with Phillip. During DHS's investigation of the incident, Kim informed a child protection worker that in the past she had used methamphetamine, but denied using drugs for more than a year. In addition to a history of substance abuse, Kim has been diagnosed with depression and anxiety.

On July 13, 2008, a DHS worker asked Kim to provide a sample for urinalysis (UA). Kim stated she had not used for a year and a half, but the UA came back positive for methamphetamine and cocaine. Hair-stat testing of the children was performed. D.A., then age three, tested positive for methamphetamine at a level indicating ingestion and not exposure. L.G., age eight months, tested positive for cocaine, also at a level indicating ingestion and not exposure. A.A., age four, spent most of her time with her grandmother and tested negative. A founded abuse report was made naming Kim as the perpetrator for denial of critical care for failure to provide proper supervision and for presence of an illegal drug. All of the children were removed from Kim's care and placed in foster care.

On July 29, 2008, the juvenile court entered an order confirming the temporary removal of the children from Kim's care. The children were adjudicated children in need of assistance (CINA) in August 2008.

DHS social worker Jamie Heard's August 14, 2008 report to the court recited in part that Kim completed a substance abuse evaluation on July 29, 2008, with Chuck Corwin; Corwin recommended outpatient treatment, but noted that if there were further substance abuse problems or if Kim failed to attend appointments for individual therapy, he would recommend more intensive treatment; on July 31, Kim completed a mental health evaluation; and individual counseling and medication management were recommended.

In February 2008, Phillip was in jail for alcohol-related offenses. In early August 2008 while on probation for third offense public intoxication and second offense OWI, Phillip was arrested for public intoxication. An arrest warrant then issued for probation violation, which led to Phillip's arrest on August 14. Phillip posted bond, and a probation violation hearing was to be set for a later date. Social worker Heard recommended Phillip complete a substance abuse evaluation. On August 26, 2008, Phillip attended a family team meeting and acknowledged he needed help for alcohol abuse.

DHS social worker Sunny Potter's September 23, 2008 report to the court indicated Kim had used methamphetamine on August 30, 2008. On September 9, 2008, Kim was arrested and charged with possession of controlled substance (methamphetamines and marijuana) and drug paraphernalia. Kim was on probation for forgery and theft charges at the time, and her probation

officer recommended residential treatment and that Kim become involved in the co-occurring program.¹

Potter also reported Phillip had completed a substance abuse evaluation on September 17, 2008. The evaluation report indicated alcohol dependence and a “high probability for continued use.” The evaluation report recommended that Phillip attend twice-weekly group treatment meetings, twice-monthly individual counseling sessions, “seek treatment for his mental health condition,” and “follow through with any DHS recommendations.”

A review hearing was held in December 2008. Kim remained incarcerated. She had been released from jail to participate in inpatient treatment, but she was unsuccessfully discharged from the program and returned to jail. Phillip, although in treatment, continued to drink and was not actively participating in services. All visits Phillip had with L.G. were supervised by a family member. The children remained in a foster care placement, but were to be transitioned into a concurrent, pre-adoptive home.

At the time of the dispositional review hearing in May 2009, Kim remained incarcerated, but was now in a correctional facility with no chance of parole until January 2010 and a release date of July 2015. She had had no visits with her children since October 28, 2008, when she was in inpatient treatment. Phillip was in a residential facility due to a probation violation. However, he was able to leave the facility to work and to have supervised visits with L.G. Phillip was described as having “good parenting skills.”

¹ A co-occurring program is designed to address both substance abuse and mental health issues.

At the July 22, 2009 permanency hearing, the State indicated its intention to file for termination of parental rights. Kim remained incarcerated. She had visited with the children on July 11, 2009, at the correctional facility.

Phillip was subsequently released from the residential facility, after the dispositional review hearing in May 2009. But within about two weeks, Phillip had a “serious drinking episode” and got into a fight. The police gave him a choice of being arrested or going to a hospital for detox. He chose detox. The incident violated his probation, and Phillip was sent back to the residential facility for seven days. Additional drinking bouts were reported in June and July. Phillip was arrested again on July 10, 2009, for third offense public intoxication, and interference with official acts. A probation revocation hearing was scheduled for July 30, 2009, and Phillip was ordered back to the residential facility. Phillip’s visits with L.G., which had progressed to semi-supervised and included overnights at his parents’ home, were then restricted to fully supervised day visits.

At the time of trial, neither Kim nor Phillip was available to parent. Kim remained incarcerated with a tentative discharge date of July 2015. Phillip was in a residential facility and facing a September 17, 2009 revocation proceeding. Following the trial on termination, the court terminated Kim’s parental rights pursuant to Iowa Code section 232.116(1)(e), (f), (h), and (j) (2009). Phillip’s parental rights to L.G. were terminated pursuant to section 232.116(1)(e), (h), and (j).

On appeal, Kim challenges the court’s finding that she had not maintained significant contact with the children. She argues when clean and sober, she has

positive parenting skills and it would be in the children's best interests to be in her care. Kim also contends there was insufficient evidence that she was not in a position to assume care or custody of the children.

Phillip argues on appeal the court erred in refusing to defer permanency so he could complete his substance abuse treatment programming as he maintained contact with the child, he made reasonable efforts to resume his care, the child could be returned to him in reasonable time, and there was a strong bond between father and child.

We review all termination determinations de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

Termination is proper where there is clear and convincing evidence of at least one ground cited by the juvenile court. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000) (noting the court need only find evidence supporting termination on one of the statutory grounds cited by the juvenile court to affirm). If a statutory ground for termination exists, termination is in the child's best interests, and no factor weighing against termination exists, we will affirm. *P.L.*, 778 N.W.2d at 39. We do so here.

At the time of termination trial, A.A. was six and D.A. was four, the children had been adjudicated CINA and had been out of Kim's custody for more than twelve months, and they could not be returned to her care in the reasonably foreseeable future. At the time of trial, L.G. was almost two and had been out of Kim's custody for more than twelve months.

Kim was incarcerated with a tentative discharge date of 2015. While early release was a possibility, we conclude the children cannot be returned to her in a reasonable amount of time. Her ability to remain drug-free was not shown.

Phillip continued to struggle with sobriety and had established only that he could maintain sobriety in a tightly controlled environment. We find no reasonable likelihood L.G. could be placed in Phillip's custody at any time soon. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing).

We reiterate that "[o]nce the [statutory] limitation period lapses, termination proceedings must be viewed with a sense of urgency." *Id.* These children have waited for each of their parents to achieve and maintain sobriety for too long. They need and deserve permanency. All three siblings are in a pre-adoptive home and are doing well in that placement.

Termination of Kim's parental rights to A.A. and D.A. is thus affirmed pursuant to section 232.116(1)(f) (child four years or older, previously adjudicated CINA, removed from parent's custody for at least twelve of last eighteen months, and cannot be returned to parent at present time).

We affirm termination of Kim's and Phillip's parental rights to L.G. pursuant to section 232.116(1)(h) (child three or younger, previously adjudicated CINA, removed from parent's custody for at least six of last twelve months, and cannot be returned to parent at present time). Termination of parental rights is in the children's best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. Any

bonding between Phillip and L.G. has been disrupted, and undoubtedly lessened, by Phillip's frequent absences caused by his criminal activities. We therefore affirm.

AFFIRMED.