

IN THE COURT OF APPEALS OF IOWA

No. 1-795 / 11-1455
Filed November 9, 2011

**IN THE INTEREST OF J.J.K., B.R.K., and M.A.C.K.,
Minor Children,**

**R.K. and D.K., Parents,
Appellants.**

Appeal from the Iowa District Court for Woodbury County, Mary J. Sokolovske, Judge.

Mother and father appeal from the termination of their parental rights.

AFFIRMED.

Matthew L. Pittenger of Juvenile Law Center, Sioux City, for appellant parents.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

James N. Daane II of Buckmeier & Daane Lawyers, P.C., Sioux City, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings.**

In March 2009, a child abuse assessment was founded¹ on grounds of denial of critical care and failure to provide adequate shelter naming the parents here, Dean and Roza, as perpetrators. In April 2009, the parents began receiving assistance from The Boys and Girls Home aimed at household management and parenting skills. Both parents have mental health conditions: the mother has been diagnosed with depression; the father with ADHD and bipolar disorder.

In September 2009, another child abuse assessment concerning Dean and Roza was founded on grounds of denial of critical care and failure to provide adequate shelter. The children (M.K. born in June 2004, B.K. born in August 2006, and J.K., born in June 2009) and their parents continued to receive voluntary services and assistance designed to address their unfit living conditions, which came to light following an inspection of their subsidized housing.²

On November 19, 2009, the children were adjudicated children in need of assistance (CINA). Following a February 11, 2010 dispositional hearing, the children remained with their parents despite concerns with the condition of the family residence, ongoing episodes of head lice, lack of transportation, parental unemployment, and the overall development of the children. Months of intensive

¹ Four other assessments dating between September 2005 and October 2008 were not confirmed, but raised concerns about proper supervision and living conditions.

² The floor of the bedroom of the two older children was covered with dog feces.

services geared to assist the parents in maintaining a safe, clean, and healthy environment for the children resulted in little progress.

On June 10, 2010, the court modified the dispositional order, removing the children from the parents' custody. In its modification order, the court wrote:

This family came to the attention of the Department of Human Services fourteen months ago. The allegations were unsanitary living conditions and untreated mental health issues. Neither parent has been employed. The parents do not have reliable transportation. The home has been described as filthy, cluttered and unkempt, and overtaken with bugs, roaches, mice, and rats. They have been granted the opportunity to use public assistance, but have been unable to use that assistance to improve their situation. There have been almost daily drop-ins by service providers to assist in teaching these parents how to maintain a safe, healthy and stimulating environment for their children. Unfortunately, these children continue to live in squalor. Dean and Roza believe that relocating to another residence will improve things. This court can only be hopeful that is the case. To date, neither Dean nor Roza have been able to internalize any information that has been presented to them in order to effectuate any change in the living conditions they have been subjecting their children to.

The children, who were each experiencing developmental delays, were placed in a foster family home.

Dean and Roza continued to receive services including supervised visits,³ ongoing assistance directed at achieving and maintaining a habitable residence, transportation, and financial assistance to receive mental health services. The parents moved several times. Gains that had been made in cleaning their residence proved temporary at best. The parents did not follow through with mental health services: the care coordinator, Kari Jensen, wrote in an October

³ Visits were stopped for a short period to get head lice under control. The children would be lice-free, but would be re-infested after visits. Roza and Dean's visits were then conditioned upon being documented lice-free by an area district health organization.

2010 progress report that Dean and Roza were both on medication for their mental health and had attended mental health appointments, but did not actively participate. It came to light that Dean was using marijuana.

In a January 2011 review order, the court noted M.K. was struggling academically “due to having missed so much school under her parents’ care”; B.K.—age four—had to undergo extensive dental work and dental surgery; and J.K. had been hospitalized with flu-like symptoms. However, the children were doing well in foster care, and were receiving the care and assistance they needed. The court received a letter from Roza’s therapist stating Roza had been “fairly consistent about making and keeping her appointments” and had attended therapy in June, July and August, then on “11/3, 11/17, 12/8, 12/22, 1/5.” Dean had not attended therapy since the intake assessment on June 30, 2010. Because Dean had failed several UAs, the juvenile court ordered Dean to complete a chemical dependency assessment and follow all recommendations.

A March 3, 2011 progress report indicated the parents had moved into another residence. Dean, who had been working in snow removal and had been paid “under the table,” was no longer getting many hours. Roza was not employed. The parents had “disengaged” from mental health services and were being prompted to recommit to those services. Roza was taking medication for depression. Dean was no longer taking medications recommended for his ADHD and bipolar disorder. Dean was to begin substance abuse treatment on March 7, 2011. By March 17, Dean was not following through with outpatient treatment recommendations.

On March 21, 2011, the State filed a petition to terminate Dean and Roza's parental rights.

A permanency and termination hearing was held on June 30, 2011, after which the juvenile court entered an order terminating parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (f) (as to B.K. and M.K.), and (h) (as to J.K.) (2011).⁴

⁴ Section 232.116(1) allows for the termination of parental rights if:

d. The court finds that both of the following have occurred:

(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.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "*significant and meaningful contact*" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

f. The court finds that all of the following have occurred:

(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.

Both parents appeal.

II. Scope and Standard of Review.

An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Our review is de novo. *Id.*

III. Merits.

Under section 232.116(1)(f) and (h), the court may terminate parental rights if (1) the child is of a specified age, (2) the child previously has been adjudicated a CINA, (3) the child has been out of the parent's custody for a specified time, and (4) there is clear and convincing evidence the child cannot be returned at the present time.

There is no doubt that statutory grounds for termination exist: for J.K. under section 232.116(1)(h); for B.K. and M.K. under section 232.116(1)(f). These children were adjudicated CINA upon a finding of parental neglect. The children have been out of their parents' custody for more than a year and cannot be returned at the present time.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

....

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There 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.

The parents argue that they were “making progress” and should have been given an additional six months to “further explore reunification.” We disagree. “While we recognize the law requires a ‘full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,’ Iowa has built this patience into the statutory scheme of Iowa Code chapter 232.” *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (citation omitted). Dean and Roza have been offered and received intensive services for more than two years, yet they are still unable to maintain a stable, safe, and appropriate home for their children. At the time of termination, in fact, the parents did not have their own residence. Each parent has mental health issues that have remained largely untreated. Dean has untreated substance abuse issues. These children should not be required to continue to wait for their parents to be able to care for them.

The children have been out of the parents’ custody since May 2010 and visitation has never progressed beyond supervised visits. The children need and deserve stability. The children arrived in foster care with developmental deficits, which have been addressed and, for the most part, overcome. They are doing well in their foster home and the foster parents have indicated they are willing to adopt all three children. We conclude the children’s current placement is “the best placement for furthering the long-term nurturing and growth of the child[ren]” in a stable, safe, and healthy environment. Iowa Code § 232.116(2); see *D.W.*, 791 N.W.2d at 708–09.

Finally, although it is clear the parents love their children, we do not find any factor found in section 232.116(3) significantly weighs against termination.

Upon our de novo review, we agree with the juvenile court that the

statutory grounds for termination have been proved, termination is in the children's best interests, and no factors weighing against termination in section 232.116(3) exist here. We therefore affirm.

AFFIRMED.