

IN THE COURT OF APPEALS OF IOWA

No. 1-884 / 11-1595
Filed November 23, 2011

**IN THE INTEREST OF A.R.A.-C. and A.A.A.-C.,
Minor Children,**

E.A.P., Father,
Appellant,

C.C., Mother,
Appellant.

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

A father and mother appeal separately from the termination of their parental rights. **AFFIRMED.**

Matthew R. Metzgar of Rhinehart Law, P.C., Sioux City, for appellant father.

Priscilla E. Forsyth, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and J. Kirsch, Assistant County Attorney, for appellee State.

Joseph Kertels, Sioux City, for minor children.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

A father and mother appeal separately from the order terminating their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the children's best interests. We review their claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children were four years old and six years old respectively at the time of termination. The mother and father are not married. However, the father in this appeal is listed on the children's birth certificates. The children came to the attention of the Iowa Department of Human Services (DHS) in November 2009. The children had been residing with their maternal grandparents and had returned home from a visit with their mother with injuries: A.A.A.-C. had a cigarette burn on his arm, and A.R.A.-C. had a black eye. Both children reported the mother had caused the burn and her boyfriend, Noel, had beaten them. The children were adjudicated in need of assistance (CINA) in January 2010, and placement was continued with the maternal grandparents.

The mother initially made great strides toward reunification; by June 2010, she had maintained employment, had her own transportation, and had obtained housing. The children were placed in her care on a trial home visit. However, in July 2010, things began to go wrong. The sister with whom she was living moved out, and the mother could not afford her residence on her own. The mother began displaying old behaviors; she began a relationship with a man named Gerry, who abused the children, and she left the children in the care of inappropriate people. The children were removed from her care.

By November 2010, the mother was again doing well. She remained employed and had her own residence. She had ended her relationship with Gerry and re-engaged in therapy. The children were again returned to her care, but one month later the DHS received a report her new boyfriend, Blue, had abused her in front of the children. Again, the children were removed and placed with the maternal grandparents.

In early 2011, the mother's depression led to an attempted suicide. By April 2011, the mother's situation had worsened, and she stopped taking her medication for the depression. She was not participating in services and, as a result, was not receiving visitation with the children. She had lost her housing for failure to pay rent, even though she was receiving some financial assistance from the DHS. She had involved herself in at least two more dysfunctional or abusive relationships since ending her relationship with Blue.

The father did not have significant contact with the children after his relationship with the mother ended. The father saw the children for a couple hours on one day in 2009 and for a few minutes in 2010. He did not participate in the services available to him and his participation in this case was minimal.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (e), and (i) (2011). The father's parental rights were terminated pursuant to sections 232.116(1)(b) and (d). Both parents contend the State failed to prove the grounds for termination by clear and convincing evidence. We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

In order to terminate under section 232.116(1)(d), there needs to be clear and convincing evidence both 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.

There is no dispute the first element has been proved. The question is whether there is sufficient evidence to show the circumstances that led to the adjudication continue to exist despite services being offered or received.

We find the mother's parental rights were properly terminated under section 232.116(1)(d). Despite receiving services for approximately eighteen months, the mother was continuing to involve herself in relationships with men who present a danger to her and to her children. She also let other inappropriate adults around the children, thus exposing them to risk of harm. She was unable to identify which persons were inappropriate, instead trying to argue why the people she let into her life—those with substance abuse histories, domestic abuse in their backgrounds, and criminal records—were appropriate. Although the mother made some improvements while this case was pending, they were temporary in nature with the mother eventually resuming old behaviors. The mother's past performance is evidence of the quality of her future care. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The children cannot be safely placed with the mother.

We find termination of the father's parental rights is appropriate under section 232.116(1)(b). Grounds for termination are proven under this section where there is clear and convincing evidence the child has been abandoned or deserted. Iowa Code § 232.116(1)(b). The term "abandonment of a child" is defined in section 232.2(1) as:

the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Abandonment requires proof of two elements: (1) the conduct of giving up parental rights and responsibilities and (2) the accompanying state of mind. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). Parental responsibilities include more than subjectively maintaining an interest in a child. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). A parent demonstrates responsibility by showing "affirmative parenting to the extent it is practical and feasible in the circumstances." *In re D.J.R.*, 454 N.W.2d 838, 842 (Iowa 1990) (quoting *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981)). A parent abandons his child when she has "abdicated [her] parental duties and failed to engage in active parenting which the parent-child relationship requires." *In re S.K.C.*, 435 N.W.2d 403, 405 (Iowa Ct. App. 1988).

The father has shown no interest in being a meaningful parent to these children. Initially the father could not be found, and the children were adjudicated CINA based on his abandonment. By the time of the disposition hearing in the CINA case, he had applied for and received court-appointed counsel, but then

failed to appear at the hearing. He had made an appointment to meet with the DHS but failed to attend the meeting. He again failed to appear at two hearings in August 2010, and his attorney was allowed to withdraw. He appeared at a review hearing in November 2010 and was told to reapply for court-appointed counsel. He reapplied for court-appointed counsel in January 2011, and counsel was appointed; however, he then failed to appear at a hearing for the children a week later. He appeared at an April review hearing where he stated he was not seeking custody of the children and admitted he had no meaningful relationship with them.

The father failed to participate in any services offered by DHS, but more importantly he has only seen the children for a couple of hours in the last three years. He has abdicated his duties as a father. By the time of the termination hearing, he had participated in three-days of parenting classes. The court determined this was “too little, too late” and we concur.

We also find termination is in the children’s best interests. In determining best interests, “the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *P.L.*, 778 N.W.2d at 39. Neither parent has demonstrated an ability to meet the children’s physical, mental, and emotional needs. The mother has chosen her lifestyle over her role as a parent, as has been her history throughout these children’s lives. The father has shown no interest in providing any support for these children and has had no contact with them in the past three years. The children should not be forced to endlessly suffer in parentless limbo. *See In re*

E.K., 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). At some point, the rights and needs of the children rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). These children need and deserve a permanent and stable home. Accordingly, we affirm.

AFFIRMED.