

IN THE COURT OF APPEALS OF IOWA

No. 6-886 / 06-1445
Filed November 30, 2006

**IN THE INTEREST OF Z.H., J.H., I.H., AND A.K.,
Minor children,**

**H.J.H., Mother,
Appellant,**

**A.H., Father of Z.H., J.H., and I.H.,
Appellant.**

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee,
District Associate Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

J. David Zimmerman, Clinton, for appellant mother.

John J. Wolfe of Wolfe Law Office, Clinton, and Jeffrey Farwell, Clinton,
for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael L. Wolf, County Attorney, and Joel Walker, Assistant
County Attorney, for appellee.

Neill Kroeger, Davenport, for minor children.

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

VAITHESWARAN, J.

Heather appeals the termination of her parental rights to Ashlynn, born in 1993, Zachary, born in 1997, Jacob, born in 1998, and Isaac, born in 2002. Anthony appeals the termination of his parental rights to Zachary, Jacob, and Isaac. Both parents contend that the juvenile court should have deferred termination of their parental rights and set up a guardianship with a relative, thereby preserving their opportunity eventually to reunify with the children. See Iowa Code § 232.116(3)(a) (2005). On our de novo review of the record, we disagree.

The Department of Human Services became involved with the children after receiving a complaint of illegal drug use and domestic violence in the home. A child abuse investigation confirmed the complaint. Heather voluntarily moved all four children to the home of their maternal grandmother and her husband, where the children remained for most of the ensuing seventeen months.

Meanwhile, the State filed domestic abuse charges against Anthony and an order was entered precluding any contact between the parents. Anthony served a jail sentence and, on his release, moved to Indiana.

As for Heather, she admitted herself to a hospital for treatment of her addictions. Following her discharge, she briefly moved in with her mother. Within a month, she moved to Indiana with her children and reinitiated contact with Anthony.

At this juncture, the State sought and obtained an order removing the children from Heather's care. They were again placed with their maternal grandparents.

From the outset, Anthony's prospects for reunifying with his children were dim. In mid-2005, he advised a service provider that his urine would test positive for the presence of cocaine and marijuana. In October of that year he asked to have telephone contact with his children but, when given the opportunity, took advantage of it only once or twice. He also curtailed contact with the Department's social worker. By the spring of 2006, the Department received word that Anthony was incarcerated in Indiana. In July 2006, the Department reported that Anthony was indeed incarcerated and had not participated in any reunification services during his incarceration. At the termination hearing, his attorney stated that Anthony was in a "40-day quarantine" and would be released from incarceration within the month. His imminent release, however, did not alter the fact that he had minimal contact with his children and was in no position to reunify with them. See Iowa Code §§ 232.116(1)(e), (f), (h). Therefore, we concur with the juvenile court's decision not to defer termination of his parental rights based on the children's placement with a relative.

Heather's prospects for reunification were also bleak at the outset. For close to a year, she did not seriously address the problems that led to the children's removal. Within a month of their removal, she and Anthony had the no contact order dismissed. In the spring of 2005, her urine tested positive for marijuana. Later, she discontinued mental health therapy and failed to obtain a substance abuse evaluation.

By the end of 2005, Heather began following Department expectations. Her improvement was so marked that, in early 2006, the Department recommended an extension of time to facilitate reunification with her children.

The juvenile court gave Heather an additional three months. Heather did not take advantage of this extension. Within days after it was granted, she went to a bar and was arrested for public intoxication and disorderly conduct.

Although her therapist remained confident that this setback was only temporary, other professionals disagreed. They uniformly stated that the children needed a permanent solution that would afford them stability and certainty and they emphasized that the solution was not reunification or the creation of a guardianship. One service provider said, "it is my belief that guardianship would be detrimental to the well-being of the children and contrary to their best interests." She continued, "periodic review would pose a continual threat of upheaval in the children's lives, and perpetual uncertainty about their future." A Department employee seconded this opinion, stating,

[T]he Department of Human Services believes that Heather would use any power and control that a guardianship arrangement would provide her to manipulate her mother and the children and would create a situation that may ultimately sabotage the placements of the children.

At the termination hearing, she testified that the Department did not support the guardianship alternative "[b]ecause it's not a permanent option for the children. The children every year would have to go through, you know, wondering if they were going to stay with Grandma or Grandpa or go back to Mom." She stated, "[a]ll of the children have stated to me that they are happy where they are . . . , that they feel safe where they are right now."

These professional opinions gained support from Heather's own testimony at the termination hearing. Asked when she last used marijuana, she admitted to

consuming the drug just two weeks before the hearing and she admitted that a urine test taken the day of the hearing would reflect this usage.

In sum, the record provides extensive support for the juvenile court's detailed fact findings and the following conclusion:

These children need a permanent solution. They will be able in the future to see their mother since [the grandmother] would allow contact but the children will have the issue of where their home is forever settled. [The grandmother] will provide the children with the stable environment and the certainty they need.

We agree with this conclusion. We affirm the termination of Heather's parental rights to Ashlynn, Zachary, Jacob, and Isaac and the termination of Anthony's parental rights to Zachary, Jacob, and Isaac.

AFFIRMED.