

IN THE COURT OF APPEALS OF IOWA

No. 6-980 / 06-1756
Filed December 28, 2006

**IN THE INTEREST OF E.D.B., D.D.P., A.M.P., JR.,
E.D.P., M.M.P., AND M.L.P.,
Minor children,**

A.M.P., SR., Father,
Appellant,

E.B., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, District Associate Judge.

A mother and father separately appeal the district court's order terminating their parental rights to six children. **AFFIRMED.**

Carrie K. Bryner, Cedar Rapids, for appellant mother.

Joseph G. Bertroche, Jr., Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Harold L. Denton, County Attorney, and Rebecca Belcher, Assistant County Attorney, for appellee.

Robert Davison, Cedar Rapids, for minor children.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

Erica and Alexander Sr. each appeal from the district court order that terminated parental rights to Erica's oldest daughter, Elizabeth,¹ and the couple's five children DeAundre, Alexander Jr., Eric, Marquicia, and Marquiece. Upon our de novo review of the record and arguments on appeal, see *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000), we affirm the termination of Erica and Alexander Sr.'s parental rights.

The children first came to the attention of the Iowa Department of Human Services in July 2003 when Eric was born with cocaine in his system. Erica and Alexander Sr. have a long history of illegal substance use, Alexander Sr. is a diagnosed schizophrenic, and Erica also has mental health issues. Hair stat tests of the three older children tested positive for extensive exposure to cocaine, as well. Eric and his three older siblings were removed from the home that month and later adjudicated children in need of assistance (CINA) in August 2003, pursuant to Iowa Code sections 232.2(6)(c)(2) (2003) (children are likely to suffer harm due to parent's failure to exercise care in supervising children); (n) (parent's mental capacity or drug or alcohol abuse results in children not receiving adequate care); and (o) (illegal drug present in children). They remained in the custody of DHS and placed in family foster care while services were provided to Erica and Alexander Sr. Erica successfully completed substance abuse treatment by the end of February 2004, rarely missed visits with the children, and demonstrated capable parenting skills at visits. Although Erica had progressed by this time, Alexander Sr. had yet to complete treatment and

¹ Elizabeth's father is deceased.

Erica was pregnant with twins, expecting a birth date in June 2004. Marquiece and Marquicia were born in June 2004 with no illegal substances detected in their systems. As Erica and Alexander Sr. continued to cooperate with services and submit clean urine analysis tests, the children were returned to Erica's custody in September 2004.

Around February or March 2005, it appears Erica and Alexander Sr. began using illegal substances again, as they failed to provide any UAs for testing in that time period. The cleanliness of the family home began to deteriorate at this time, as well. The district court told Erica and Alexander Sr. at a review hearing in early July 2005 that they were not in compliance with services and the court's expectations of their progress and warned the children would be removed unless they began to comply. The court ordered the children placed in protective day care, ordered the parents to cooperate with drug testing, maintain a clean and safe home, and ordered a family support worker be provided to Erica for dealing with the difficulties of raising six children. After this hearing Erica and Alexander Sr. did not submit to drug testing for another six weeks. When finally tested, Erica's hair sample was insufficient to test, Alexander Sr.'s was positive for cocaine, and a subsequent test of the four older children's hair was also positive for cocaine. DHS again removed all six children and placed them in family foster care.² The children have remained out of the care and custody of their parents since August 2005.

² The twins were adjudicated CINA in early September 2005 following this removal, pursuant to sections 232.2(6)(c)(2) (children are likely to suffer harm due to parent's failure to exercise care in supervising children); (n) (parent's mental capacity or drug or alcohol abuse results in children not receiving adequate care); and (o) (illegal drug present in children).

Following the second and last removal, it appears from the record that both parents continued to use cocaine. Erica did not enter inpatient treatment at MECCA in Des Moines until July 2006 after the petition to terminate parental rights was filed. This was her seventh treatment program. After discharge from the inpatient program, Erica was referred to outpatient treatment at ASAC's Heart of Iowa program but has struggled with attendance. Her outpatient counselor reported that Erica justifies her behavior, is defensive when confronted by her peers in meetings, and refuses assistance with proposed ideas to address her mental health and other issues by making excuses of other commitments. Her counselor has no doubt Erica is still using drugs and sees little chance of progress in her recovery process. Although Erica is a likeable person and good mother when not on cocaine, the counselor has heard the same stories and excuses from Erica throughout this case and doesn't believe she will ever have the motivation to permanently change, especially due to her depression issues.

Visits continued to be supervised during the pendency of the case following the second removal, due to the parents' lack of consistent clean drug screenings. The record reflects that Erica consistently attended supervised visitation and appropriately interacted with the children. Alexander Sr.'s interaction with the children at the visits was limited. A family team meeting was also held in August 2006, where substance abuse, couple's counseling, and employment were discussed with Erica and Alexander Sr. They attended one couple's counseling meeting, but another UA in early September 2006 tested positive for cocaine by Alexander Sr. Erica's UA sample was too diluted to assure a valid result, purportedly from Erica's dieting and increased herbal tea

and other fluid intake. Although Erica asserted at the last review hearing in September 2006 that she had asked Alexander Sr. to move out of their apartment so that she could focus solely on the children, neither the court nor DHS believed her resolutions credible or would be long term due to her historic unwillingness or inability to be emotionally and physically separated from him.

The petition for termination was filed in mid-June 2006, seeking termination under code sections 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, child cannot be returned home)(for Elizabeth, DeAundre and Alexander, Jr.); (h) (child three or younger, child CINA, removed from home for six of last twelve months, child cannot be returned home); (for Eric, Marquicia and Marquiece) and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). At the time of hearing in mid-October, the older children had been removed for twenty-five of the preceding thirty-eight months. The final DHS report prepared in anticipation of the termination hearing recommended termination of parental rights for both Erica and Alexander Sr., due to their continued drug use and pattern of short-term improvements followed by relapse. Additionally, the service providers testifying at the hearing stated that they believed termination was in the best interests of the children: although the children were bonded with their parents, the parents were unable to consistently provide a stable home, and additional time would not ameliorate the parents' continued pattern of substance abuse.

The district court entered its order later that month, finding it in the children's best interests and supported by clear and convincing evidence to

terminate under all three code sections. Erica had requested six additional months at the termination hearing to work towards reunification and complete her substance abuse treatment. The district court did not address the additional time request by Erica, but found by the statutory terms that the children either could not be returned to their parents or could not be returned in a reasonable time. Erica and Alexander Sr. each separately appeal the termination order.

Clear and Convincing Evidence for Termination. Erica argues on appeal that the State failed to prove the grounds for termination. Those grounds must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Erica's rights to all six children were terminated pursuant to section 232.116(1)(f). The record is clear that Erica has a chronic and severe substance abuse problem. According to Erica's own recollection, she has attended drug treatment seven different times. Eric was born with cocaine in his system, meaning Erica used while she was pregnant with him. Following her last relapse, Erica did not actively seek treatment until after the petition for termination was filed. Her outpatient counselor has serious doubts about her ability to remain drug-free. The district court also believed that Erica was using illegal substances again after her discharge from inpatient treatment in August 2006. Following the passage of thirty-eight months, Erica's continued illegal substance issues, with little progress or confidence in her long term abstinence, we agree with the district court that the children could not be returned to her care within a reasonable time. Having found rights were properly terminated under one of the statutory grounds relied upon by the juvenile court, we may affirm the terminations without addressing whether proper findings were made under the

other statutory provisions. See *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We affirm on this issue.

Additional Time for Reunification. Erica also argues that she should have been given additional time to work towards reunification, with her recent efforts to stabilize her life without Alexander Sr. A parent does not have an unlimited amount of time to achieve reunification with her children. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). As previously noted by this court:

We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. A child should not be forced to endlessly suffer the parentless limbo of foster care. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Children simply cannot wait for responsible parenting.

In re E.K., 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (citations omitted).

Throughout the pendency of this case, Erica has demonstrated a pattern of limited progress followed by relapse into using illegal substances. The children have already waited years for Erica to put their needs ahead of her need for illegal drugs. “At some point, the rights and needs of the child rise above the rights and needs of the parents. The legislature, through section 232.116 directs us to that point.” *In re J.L.W.*, 570 N.W.2d 778,781 (Iowa Ct. App. 1997).

Erica was given ample time and opportunity to put her children ahead of her destructive lifestyle. The district court did not err in finding the grounds for termination were met and implicitly denying Erica’s request for additional time. We affirm.

Best Interests. Finally, Erica and Alexander Sr. each argue that termination is not in the children's best interests. In all termination of parental rights cases, our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). We use the parents' past performance to assess their ability to provide future care, giving substantial weight to case history records. *In Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). At the time of trial, Alexander Sr. had made little or no effort to seek treatment for his substance abuse issues and continued to use drugs. Though she had been in treatment recently, the district court still believed Erica was using drugs at the time of hearing, as well. We conclude that, even though Erica and Alexander Sr. may love their children, they also have a defenseless pattern of making their substance abuse a priority over the care and well-being of their children. All service providers recommended termination in the children's best interests to finally have stability in their young lives. The children have a bond with their parents, but this bond is not an overriding consideration especially when substance abuse endangers the children's health. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The children have waited long enough for their parents to secure their lives and make the children's care a constant, prime concern. We agree with the district court that termination is in the children's best interests and affirm the termination of Erica and Alexander Sr.'s parental rights.

AFFIRMED.