

IN THE COURT OF APPEALS OF IOWA

No. 7-384 / 07-0609

Filed June 13, 2007

**IN THE INTEREST OF P.L.J., M.L. and A.L.W.,
Minor Children,**

C.E.L., Mother,
Appellant,

M.W., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate Juvenile Judge.

A mother of three children, and the father of one of those children appeal from the order terminating their parental rights. **AFFIRMED.**

David Pargulski, Des Moines, for appellant mother.

Scott Bandstra of the Bandstra Law Firm, P.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Faye Jenkins, Assistant County Attorney, for appellee.

J. Michael Mayer, Des Moines, for appellee father.

Jane Rosien, Winterset, guardian ad litem for the minor children.

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

VOGEL, J.

Charles is the mother of Preanna, who was born in 2000, Montary, who was born in 2003, and Alize, who was born in 2005. Matthew is the father of Alize. The family first came to the attention of the juvenile courts in 2004, when Preanna tested positive for cocaine during a child protective assessment investigation. This case was closed in October 2005, when the Iowa Department of Human Services (DHS) felt Charles was able to keep her children safe. However, in December of 2005, the children were removed from her care after police executed a search warrant at the home and discovered a large amount of crack cocaine in a location readily accessible to the children.¹ All three children tested positive for cocaine following their removal.

Based on this incident, the children were adjudicated to be children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005). After a variety of services were offered to Charles and troubling issues remained concerning her care of the children during visits, the State file a petition seeking to terminate her parental rights. It also sought termination of Matthew's rights and the fathers of the other two children.² Following a hearing, the court granted the State's request. It terminated Charles's rights to all three children under sections 232.116(1)(d), (g), (h) and (i), and to Preanna under section

¹ Charles subsequently pled guilty to possession with intent to deliver and child endangerment based on this incident. She was sentenced to imprisonment, but her sentence was suspended and she was placed on probation. Matthew pled guilty to possession with intent to deliver and he was sentenced to ten years imprisonment, with an expected release date of June 16, 2010.

² The fathers of Preanna and Montary do not appeal the termination of their parental rights.

232.116(1)(f).³ It also terminated Matthew's rights to Alize under sections (b), (d), (e), (g), (h), and (i).

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

On appeal, Charles alleges (1) the State failed to establish that the circumstances that led to adjudication continued to exist at the time of the termination hearing, (2) the court erred in concluding the children could not be returned to her care, and (3) she should be given additional time to work towards reunification. Upon our de novo review of the record, we reject each of these contentions, and specifically find termination of Charles's parental rights appropriate under section 232.116(1)(i) (CINA, abuse or neglect posed significant risk to child, offer and receipt of services would not correct the conditions that led to the abuse).

On at least two documented occasions, Charles has placed her children in danger by exposing them to drugs. In October 2005, when Charles had

³ In its termination order, the juvenile court concludes "the allegations of the petition have been proven by clear and convincing evidence." It does not specifically set forth the Code provisions under which it found termination to be appropriate as to each parent and for each child.

successfully participated in services and DHS believed she had reached maximum benefits, Charles almost immediately repeated the type of action that had necessitated DHS involvement in the first place: exposing the children to crack cocaine. Charles's personal history demonstrates she lacks the insight to implement and retain child protection skills taught through the services offered. See *In re L .L.*, 459 N.W.2d 489, 493-94 (Iowa 1990) (noting past performance may be indicative of quality of future care the parent is capable of providing). Charles simply does not recognize or appreciate the risk she poses to the children or the impact on these children of exposure to violence and illegal substances. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). The State presented evidence that Charles has a long history of relationships with assaultive and substance abusing men, which has impeded Charles's ability to protect her children. Her individual therapy has been geared towards overcoming this problem, but Charles has shown little progress in understanding how she exposes her children to danger.

At the time of the termination hearing, Charles was still residing in an inpatient drug treatment setting and had regressed from unsupervised to fully supervised visits with the children. The court was correct in its refusal to grant her additional time to work towards reunification, when her progress was woefully inadequate and the children are still waiting. A full measure of patience had already been extended to her. These children deserve permanency, which

Charles has not been able to provide. We affirm the termination of her parental rights to all three children.

We also affirm the termination of Matthew's parental rights to Alize under section 232.116(1)(i). Having been incarcerated for most of Alize's life, Matthew has not had any contact with her for more than one year. He does not expect to be released until 2010. Termination of parental rights is not a necessary result of incarceration, see *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993); however, Matthew cannot overcome the effect his poor lifestyle choices have had on his ability to parent his child. He has contributed to his child's exposure to drugs, has engaged in violence against Charles, and is now imprisoned for his criminal activities. Termination of his parental rights is clearly in Alize's best interests.

AFFIRMED.