

IN THE COURT OF APPEALS OF IOWA

No. 8-138 / 08-0043
Filed March 14, 2008

**IN THE INTEREST OF M.S. and J.S.,
Minor Children,**

J.S., Father,
Appellant,

M.E.M., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

A father and mother appeal from the order terminating their parental rights. **AFFIRMED.**

Scott D. Strait, Council Bluffs, for appellant father.

Phil R. Caniglia, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Eimers, Assistant County Attorney, for appellee State.

Marti D. Nerenstone, Council Bluffs, for minor children.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Jim and Michele appeal from the order terminating their parental rights to J.S., their four-year-old child, and M.S., their two-year-old child.

I. Facts and Prior Proceedings

J.S. was born in December 2003 with cocaine in her system. Shortly thereafter she was placed in foster care. Michele later admitted she used cocaine two days before J.S. was born and five days after J.S. was born. On February 27, 2004, J.S. was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (o) (2003). Both parents did not fully comply with requested drug screens and visited J.S. sporadically.

M.S. was born in January 2005. Because Jim was still not complying with requested drug screens or drug treatment, M.S. was temporarily removed from her parents' care and placed in foster care for approximately ten days. Over the next several months, the parents complied with random drug screenings and made strides towards reunification. On June 9, 2005, the court returned J.S. to her parents' care, but kept both children under the protective supervision of the Iowa Department of Human Services (DHS).

This reunion lasted less than six months because Jim stopped fully complying with random drug screenings. The children were removed from the parents for the second time in November 2005. M.S. was subsequently adjudicated CINA pursuant to sections 232.2(6)(c)(2) and (n) (2005).

Because Michele complied with random drug screenings and stopped associating with Jim, the children were soon returned to her care. By February

2006 Jim had started to comply with drug screenings, so the court entered an order permitting him to reside with Michele and the children.

This reunion was also short lived. The children were removed for a third time in June 2006 when both parents once again stopped complying with court-ordered drug screens.

In September 2006 Michele accused Jim of domestic abuse and requested a restraining order. Once he was no longer living with Michele, Jim's participation in the CINA proceedings waned and he became hostile with DHS caseworkers.

The children were returned to Michele's care in December 2006. This reunification lasted seven weeks. On January 29, 2007, the children were removed from Michele's care for the fourth and final time when she was arrested for operating a vehicle while intoxicated. On the way to jail, Michele told the officers she had to get home to care for her "babies." The officers went to her home and found she had left the two and three-year-old children alone in the family home.

The children were returned to the same foster parents who provided care during most of the previous removals. A paternal aunt was interested in taking custody of the children, but Michele indicated she would rather have the children reside with the current foster parents. The court decided to leave the children with the foster parents, noting "these foster parents have raised the children to the age they are now" and the foster home "is the only real home that they have known and the only real parents they have known."

On August 30, 2007, the guardian ad litem for the children filed a petition to terminate both parents' parental rights. For reasons not pertinent to this appeal, the hearing on the petition was conducted on three separate dates over a one-month period. At the first hearing, Michele testified that she had quit drinking alcohol in June 2007. However, when confronted with evidence that she was observed drinking in September, she admitted to drinking alcohol over the Labor Day weekend. Michele also told the court she had stopped associating with Jim, except for rare occasions where he forced her to spend time with him. Once again, this testimony was contradicted by a neighbor who saw Jim at her home on a regular basis. Finally, when she was asked "what do you feel is in the best interest of [J.S.] and [M.S.] today," Michelle responded by saying "Probably for them to stay with [their foster parents]."

On December 28, 2007, the juvenile court entered an order terminating both parents' parental rights pursuant to Iowa Code sections 232.116(1)(h) and (i) (2007). Jim's parental rights were also terminated pursuant to sections 232.116(1)(b) and (e).

Michele and Jim appeal separately. Both claim there were insufficient statutory grounds for termination and that termination is not in their children's best interests. They also claim they have a strong bond with their children and they should have been given more opportunities to prove they could care for them. Jim also challenges whether the State provided sufficient reunification services. The State joins the brief filed on behalf of the guardian ad litem.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence and our primary concern is the children's best interests. *Id.*

III. Merits

Statutory Basis. Both parents claim the evidence does not support termination under any of the sections listed by the juvenile court. Because we find statutory grounds for termination under section 232.116(1)(h), we need not address the arguments pertaining to the other statutory grounds listed by the court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Under section 232.116(1)(h), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the children are three or younger, (2) the children have been adjudicated in need of assistance, (3) the children have been removed from the home for six of the last twelve months, and (4) the children cannot be returned home at the present time. The first three elements are not in dispute; the parents only claim the children could have been returned to their care at the time of the termination hearing. We disagree.

Jim did not participate in any of the three termination hearings and the DHS caseworker testified that she had not had contact with him since February 2007. Throughout the CINA proceedings, Jim has been largely noncompliant with his court-ordered requirements—most notably drug screening and chemical abuse treatment.

While Michele did participate in the termination proceedings, her testimonial lack of veracity and history of poor decision making proved that she

was still unable to care for her children. Over the past four years, Michele has been offered numerous opportunities to care for her own children. Each opportunity ended with another removal. She claims to have made great strides towards sobriety during the past three and one half months, but other evidence belies this claim. Similarly, she testified about Jim's drug habits and abusive behaviors, yet she continued to associate with him while simultaneously claiming she had no relationship with him.

Upon our de novo review of the evidence, we conclude the district court properly determined the children could not be returned to either parent's care. Accordingly, we find the guardian ad litem has proved the statutory grounds for termination.

Reunification Services. Jim claims DHS failed to provide him with sufficient reunification services. We disagree. During the course of the CINA proceedings Jim was offered chemical dependency evaluations, chemical dependency treatment, psychiatric evaluations, supervised visitations, drug screening, family centered services, and batterer's education. His participation in these programs was sporadic and wholly nonexistent during the preceding nine months. The reunification services offered to Jim were more than sufficient; he simply chose not to take advantage of them.

Best Interests. Even where there is a statutory basis to terminate parental rights, the termination must still be in the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Both parents claim their strong bond with the children means that termination is not in the children's best interests. A strong bond between parent and child is a special circumstance that militates

against termination. Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

As we have noted many times before, the crucial days of childhood “cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Because these parents have squandered numerous opportunities to prove they could effectively care for their children, we find their bond with the children is not a controlling factor in this case. After four years of services, neither parent has shown that they can place their children’s needs above their own. The only stability these children have known throughout their entire lives has come from their foster parents.

Although termination will no doubt cause the children some sadness and sense of loss, we also realize that, based on their parents’ prior behaviors, there is a strong possibility neither parent will ever be able to provide for the children’s basic needs. See *J.E.*, 723 N.W.2d at 798 (noting a parent’s past performance is likely indicative of the quality of care the parent will provide in the future). Therefore, giving “primary consideration to the child[ren’s] safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren],” we conclude the children’s needs are served by terminating both parents’ parental rights. Iowa Code § 232.116(2).

AFFIRMED.