

IN THE COURT OF APPEALS OF IOWA

No. 8-373 / 08-0438

Filed May 14, 2008

**IN THE INTEREST OF K.H. AND M.C.H.,
Minor Children,**

**J.L.H., Father,
Appellant.**

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

A father appeals the termination of his parental rights to his children.

AFFIRMED.

Yvonne C. Naanep, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Bryan Tingle, County Attorney, and Alyssa Kenville, Assistant
County Attorney, for appellee State.

Diana Rolands, Osceola, for appellee mother.

Paul White of Des Moines Public Defender's Office, Des Moines, for minor
children.

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

VAITHESWARAN, J.

Kade, born in 2003, and Mary Clare, born in 2004, were removed from the care of their parents after Kade overdosed on Benadryl. A physician testified that their mother, Kasey, suffered from Munchhausen Syndrome by Proxy, a term “used to describe a condition where a caregiver, usually a parent, 90 percent of the time in mothers, creates symptoms describing illnesses in a child in order to seek medical help for the child.” Dr. Shah opined that Kasey caused the overdose. Eventually, the juvenile court terminated Kasey’s parental rights, as well as the parental rights of the children’s father, Jeff.

Jeff appealed the termination decision. He contends (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the juvenile court and (2) termination was not in the children’s best interests.

I. We may affirm if we find clear and convincing evidence to support termination under any of the grounds cited by the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 2003). On our de novo review, we conclude termination of Jeff’s parental rights to Kade was warranted under Iowa Code section 232.116(1)(f) (2007) (requiring proof of several elements including proof that child four years of age or older could not be returned to parent’s custody) and termination of Jeff’s parental rights to Mary Clare was warranted under section 232.116(1)(h) (requiring proof of several elements including proof that child three years of age or younger could not be returned to parent’s custody).¹

¹ The juvenile court issued separate rulings for each child but cited both provisions in each ruling. At the time of the termination hearing, Mary Clare was three years old and Kade was four years old. *In re M.T.*, 613 N.W.2d 690, 693 (Iowa Ct. App. 2000) (noting child’s age determined at time of termination hearing).

The children were removed and placed with their maternal grandparents in April 2006. Four months later, the juvenile court ordered them transitioned to the care of their father. The court limited contact between the children and their mother to supervised visits.

Mary Clare and Kade remained with their father for four months. In December 2006, they were removed from his care based on allegations that he was not properly supervising them and had taken them to Minnesota without authorization from the Department of Human Services. There was also a suspicion that Jeff was allowing Kasey to interact with them, in violation of a no-contact order. In April 2007, the children were placed with distant relatives in Missouri. Jeff and Kasey moved to Minnesota, where Jeff's mother lived.

The State relied on several factors to support its case for termination of Jeff's parental rights: (1) Jeff's unwillingness to acknowledge that Kasey posed a danger to them, (2) Jeff's failure to maintain contact with the Department and to truthfully apprise the Department of his employment status, (3) Jeff's failure to pursue regular visitation with the children, and (4) Jeff's failure to cooperate with services.

The first factor is dispositive. At the termination hearing, Jeff was asked whether he believed Kasey had been a danger to the children. He answered, "No." He admitted that Kasey was diagnosed with Munchausen Syndrome by Proxy based on Kade's hospitalization for the Benadryl overdose but declined to attribute that overdose to her. While he agreed to sever his ties with Kasey if required, he made this offer reluctantly and only after insisting Kasey could parent the children if she continued with mental health therapy. Given Jeff's

reluctance to acknowledge and protect the children from the ramifications of Kasey's diagnosis, we agree with the juvenile court that they could not be returned to his custody.

The remaining factors cited in support of termination were less cogent. For example, Jeff acknowledged that he did not apprise the Department of his move to Minnesota, but he testified Kasey did. The record supports this assertion. Additionally, while Jeff missed several visits with his children, one of these visits was scheduled on a work day, just after he began a new job in Minnesota. Jeff testified he did not want to jeopardize this job by asking for a day off. Finally, the Department's assertion that Jeff was uncooperative with services was countered by evidence from service providers. A therapist who began working with him in August 2006 stated that Jeff had been "receptive and cooperative with in-home services." The therapist also noted that Jeff was participating in other services "including individual therapy, and substance abuse classes to foster healthy relationship, decision-making and coping skills." Similarly, a psychologist stated that Jeff was "making good progress and is cooperating with treatment." For these reasons, we place little weight on these factors.

II. The ultimate consideration is a child's best interests. *In re CB*, 611 N.W.2d 489, 492 (Iowa Ct. App. 2001). We believe those best interests were served by termination of Jeff's parental rights. Kade's health and safety was compromised while he was in his mother's care. Jeff was unwilling to recognize this fact. As the juvenile court stated:

[Jeff] has done nothing to separate himself from Kasey and instead comes to her defense rather than putting the children first. This continued supportive relationship with Kasey prohibits him from reuniting with his children. The relationship between Kasey and Jeff creates substantial risk to the health, safety and well-being of the children.

We fully concur in this determination.

AFFIRMED.