

IN THE COURT OF APPEALS OF IOWA

No. 8-506 / 08-0782

Filed July 16, 2008

**IN THE INTEREST OF E.M. and G.M.,
Minor Children,**

**K.R.M., Mother,
Appellant,**

**G.J.M., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

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

Jesse Macro, Des Moines, for appellant father.

Marla McCoid, Bondurant, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant County Attorney, for appellee State.

Michael Sorci of Youth Law Center, Des Moines, for minor children.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Kathleen and Jesse separately appeal from the district court order terminating their parental rights to G.M. (born in January 2002) and E.M. (born in November 2003). Because we find that the State proved the grounds for termination by clear and convincing evidence and termination is in the children's best interests, we affirm.

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In January 2006, an Iowa Department of Human Services (DHS) assessment determined Jesse had physically abused the children and Kathleen had denied them critical care. Although the family was offered many services, including in-home services and parenting classes, Kathleen and Jesse were reluctant to participate and violence in the home continued. In August 2006, after another founded report of physical abuse naming Jesse as the perpetrator, a safety plan was implemented that prohibited Jesse from having unsupervised contact with the children. However, Kathleen did not follow the safety plan and allowed Jesse to have the prohibited contact. The following month, Jesse assaulted Kathleen and was subsequently convicted of domestic abuse assault. In November 2006, the children were adjudicated children in need of assistance pursuant to Iowa Code section 232.2(6)(b) (2005). At this time, the children were left in Kathleen's care and a no-contact order was entered that prohibited Jesse from having unsupervised contact with the children and allowed only telephone contact with Kathleen.

In December 2006, Kathleen was incarcerated for identity theft and violating her probation on prior fraud and forgery convictions; the children were

placed in foster care. Both Kathleen and Jesse were again offered numerous services, but their participation was sporadic and neither was able to progress such that they could safely parent their children. Kathleen was released from prison in May 2007. She participated in some services and was given additional time to work towards reunification. However, she was re-incarcerated in December 2007. During this time, Jesse did not actively participate in services. In June 2007, he was discharged unsuccessfully from substance abuse treatment for failure to attend and participate. Shortly thereafter, he was sentenced to a residential facility because he had not yet completed the batterer's education classes ordered as a condition of his domestic abuse probation. He was released from the residential facility in August 2007. Consequently, after nearly two years of services, the State filed a petition seeking to terminate Kathleen's and Jesse's parental rights. On April 28, 2008, after a hearing, the district court terminated both parent's rights pursuant to Iowa Code sections 232.116(1)(d) and (f) (2007).

Kathleen first asserts that the children were not adjudicated due to "neglect," therefore termination of her parental rights under Iowa Code section 232.116(1)(d) was improper. This section requires that the children were adjudicated due to physical or sexual abuse or neglect "as the result of the acts or omissions of one or both parents." Iowa Code § 232.116(1)(d). In this case, the children were adjudicated due to physical abuse in the home by Jesse and Kathleen's failure to protect the children from his abusive conduct. This clearly demonstrates that she neglected a most basic need of the children—protection from abuse. Throughout this case, Kathleen has exposed the children to

dangerous situations by allowing Jesse to have unsupervised contact with the children and has frequently been deceitful in dealing with DHS workers.

Additionally, we note that Kathleen does not contest the termination of her parental rights under Iowa Code section 232.116(1)(f) and concedes all of the requirements under this code section were met. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”). Upon our review, we agree that the State established each element required to terminate parental rights under Iowa Code sections 232.116(1)(d) and (f).

Additionally, Kathleen asserts that termination of her parental rights is not in the children’s best interests. We disagree. Upon removal,¹ the children were placed in foster care, where they have been provided a safe and stable environment. See *In re J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in a child’s best interests). E.M. and G.M. have bonded with their foster parents, who are willing to adopt them. Due to safety concerns, Kathleen cannot care for the children either now or in the foreseeable future. Additionally, at the time of the termination hearing she was in prison and did not anticipate being eligible for parole until July 2008. She would still need time to benefit from services even to begin to understand how she has failed to protect her children from abuse. Upon our review of the record, we conclude it is in the children’s best interests that Kathleen’s parental rights are terminated.

¹ The children were briefly placed with relatives prior to the foster family placement.

Next we examine Jesse's contention that the children could be safely returned to his care and thus, the district court erred in terminating his parental rights. Following the first founded report of physical abuse, Jesse was offered services, including in-home services and parenting classes, yet his compliance was minimal. Following the second founded report of physical abuse, he was again offered services, including batterer's education classes and substance abuse treatment. Again, he resisted participation and continued to violate the no-contact order. At the time of the termination hearing, Jesse had not completed the batterer's education classes or the recommended substance abuse treatment. As a result, he never progressed past supervised visitation with the children. A March 2008 report noted that Jessie was not employed and did not have a place to live, and further stated: "It is also very clear that neither parent is at a point now where they can care for and meet the children's needs." Because Jesse has failed to address the issues that led to the physical abuse of E.M. and G.M., he remains a danger to the children's safety. It is evident from the record that the children cannot be returned to his care and the district court appropriately terminated his parental rights.

Jesse further asserts that termination of his parental rights is not in the children's best interests. Although Jesse was offered services for over two years, his participation was minimal and he was not motivated to regain custody of his children. The children are in need of a safe and permanent home. See *In re J.E.*, 723 N.W.2d at 802. As discussed above, E.M. and G.M.'s foster parents have provided a safe and stable environment and are willing to adopt them. "At some point, the rights and needs of the children rise above the rights and needs

of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

Therefore, we conclude that it is in E.M. and G.M.’s best interests that Jesse’s parental rights are terminated.

AFFIRMED.