

IN THE COURT OF APPEALS OF IOWA

No. 8-546 / 08-0663

Filed July 16, 2008

**IN THE INTEREST OF L.A.-S., L.A.-S., L.A.-S., J.L.-S.A.
and C.S.,
Minor Children,**

D.S., Mother,
Appellant,

J.A., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A father appeals from a juvenile court order terminating his parental rights.

AFFIRMED.

David R. Zellhoefer of Zellhoefer Law Office, Waterloo, for appellant-mother.

Michael Lanigan of Lanigan Law Office, Waterloo, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Harold Denton, County Attorney, and Steven Halbach, Assistant County Attorney, for appellant.

Timothy M. Baldwin, Waterloo, guardian ad litem for minor child.

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

MILLER, P.J.

Jack is the father of ten-year-old LaQuieta, nine-year-old LaDorshae, eight-year-old LaVenus, five-year-old Jack Linn, and one-year-old Cinderella (“the children”). Jack appeals from an April 2008 juvenile court order terminating his parental rights to the children.¹ We affirm.

The Child Protective Services Unit of the Iowa Department of Human Services (DHS) has a lengthy history of involvement with this family. Beginning in 2001, it conducted nine assessments of reported abuse and neglect of the children. Eight of the assessments resulted in founded child abuse reports and one resulted in a confirmed report due to the parents’ failure to provide proper supervision and adequate medical care for the children. The most recent assessment, which was initiated in November 2006, resulted in a founded child abuse report based on allegations that Jack was using drugs in front of the children.

The four oldest children were removed from their parents’ physical custody in late November 2006 and temporarily placed in the legal custody of DHS for placement in foster care after hair stat testing revealed LaQuieta and LaDorshae had been exposed to cocaine while LaVenus and Jack Linn had been exposed to cocaine and marijuana. Cinderella was born on the same day her siblings were removed from their parents’ care, and she was also temporarily placed in the legal custody of DHS for placement in foster care upon her discharge from the hospital.

¹ The order also terminated the parental rights of the children’s mother, Debra. Her appeal was dismissed by order of our supreme court.

Following a removal hearing, the juvenile court confirmed the children's removal from their parents' care and placed their legal custody with DHS. The children have thereafter remained in the legal custody of DHS, placed in family foster care. They were adjudicated children in need of assistance (CINA) in late March 2007 pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005).²

Although Jack denied using drugs, he initially refused to provide drug screens or to complete a substance abuse evaluation. He finally provided a specimen for drug testing in late December 2006, which was negative for drug use. He began outpatient substance abuse treatment for his addiction to alcohol in late January 2007 and was successfully discharged from the treatment program in March 2007. However, he refused to sign a release of information that would allow DHS to access his substance abuse treatment records. He also continued to drink alcohol after he completed his substance abuse treatment and admitted to arriving at a November 2007 parent skill session at his home under the influence of alcohol.

Jack also initially refused to complete a mental health evaluation despite past diagnoses of generalized anxiety disorder, parent-child and partner relational problems, and personality disorder with features of schizoid, paranoid, and avoidant personality disorders. He eventually completed an evaluation in March 2007, although he did not allow DHS access to his mental health records until several months later, and began participating in counseling to address his

² The four oldest children had previously been adjudicated CINA in 2003. Extensive services, which included family centered service supervision, parent skill development, protective daycare, and mental health counseling, were provided to the family from 2001 through December 2005 when it was believed maximum benefits had been achieved despite continued protective concerns.

issues with anger management. He later revoked the release he had signed allowing DHS access to his mental health records.

Despite counseling, Jack struggled with controlling his anger throughout the juvenile court proceedings. He often became angry with the service providers involved with his family and occasionally threatened them with physical violence.³ His relationship with the children's mother, Debra, was described as volatile with several documented incidences of domestic violence. One such incident occurred in January 2004 when Jack hit Debra on her jaw in front of the children, resulting in a founded child abuse report. Debra told several caseworkers on different occasions that she and Jack physically and verbally abused one another. Jack minimized the violent nature of his relationship with Debra, stating, "[w]e've hit each other," but "mainly . . . it's love hits, you know, taps or whatever."

The four oldest children all have significant behavioral difficulties, which include physically aggressive behavior. Two of the children have been diagnosed with attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). One child exhibited suicidal behavior and threatened to harm one of her sisters with a scissors. She was not receiving her prescribed medication or mental health counseling at that time. The three older children also have significant medical problems. Two of them have been diagnosed with seizure disorders, and all three suffer from asthma.

³ Jack admits in the brief he filed with this court that he "may have had issues with anger management, but it was only directed at Ms. Meyer," the DHS social worker assigned to his case.

The parents' visits with their children were described by service providers as chaotic. Although Jack attended every visit with his children, he often arrived late or left early. He and Debra had difficulty co-parenting during the visits. Debra would attempt to discipline the children, but Jack would undermine her attempts. They disagreed on appropriate supervision of the children with Jack allowing the children to "roughhouse to the point where one would cry." Their ability to communicate with one another and parent together improved as the case progressed. Yet they were never able to proceed beyond supervised visitation.

In November 2007, the juvenile court waived reasonable efforts to preserve and unify the family. Soon thereafter, the State filed a petition to terminate parental rights. Following a hearing, the juvenile court entered an order terminating Jack's parental rights to the four oldest children pursuant to Iowa Code sections 232.116(1)(f), (g), and (h) (2007), and to the youngest child pursuant to sections 232.116(1)(g), (h) and (k). Jack appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Jack claims the juvenile court erred in finding there was clear and convincing evidence that the children could not be returned to his care at the time of the termination hearing. His claim implicates only the fourth element of sections 232.116(1)(f) and (h). This element is proved when the evidence shows

the children cannot be returned to the parent without remaining CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the children's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Jack's parental rights to two other children were terminated in 1994 due to his documented substance abuse addiction and unwillingness to care for them. At the time of the termination hearing in this case, Jack had received or been offered numerous services for approximately seven years due to concerns about his ability to care for his children with Debra. Initial concerns focused on his suspected substance abuse, failure to provide supervision, and failure to provide adequate medical care for his children. Additional concerns thereafter included his mental health, inability to control his anger, and inability to effectively co-parent with Debra.

There were two occasions when Jack left the children unsupervised in the home or supervised them while he was consuming alcohol. On one such occasion, one of the children ingested an entire bottle of her seizure medication. There were also several occasions when Jack did not ensure the children received adequate medical care. When Jack Linn first came home from the hospital, both Debra and Jack observed that her lips and mouth were turning blue but they did not take her to the emergency room. On another occasion, Jack inadvertently gave LaQuieta a dose of her seizure medication after Debra had already done so. Neither Jack nor Debra took LaQuieta to the emergency room despite being advised to do so by the poison control center. There was

also a period of time where LaDorshae was not receiving her prescribed medications or mental health counseling while she was in her parents' care, which resulted in her exhibiting very concerning suicidal and physically aggressive behavior.

Despite being diagnosed with alcohol dependence in March 2007 and completing an outpatient substance abuse treatment program, Jack continued to abuse alcohol during the juvenile court proceedings and denied that he was an alcoholic. He also minimized the difficulties he experienced with his anger, stating his anger "has been expressed only towards the DHS." However, he and Debra have a lengthy history of domestic violence with "both Jack being physical with Deb and Deb being physical with Jack. . . . There's a lot of yelling and arguing in front of the children. This has occurred during visits also."

Jack and Debra's relationship appears chaotic and unstable. Although they are married, they maintain separate residences but they periodically reside with one another. A variety of other individuals also occasionally live with Jack, including his adult son from another relationship⁴ who is on probation for drug-related charges. Jack refused to acknowledge the danger associated with exposing his children to such individuals.

Furthermore, although Jack attended all of the supervised visits with his children, he often arrived late, left for a significant portion of the visit, or left the visit early. He was often uncooperative with DHS throughout the proceedings as exhibited by his refusal to sign releases that would allow DHS access to his medical records or by revoking releases once he had signed them.

⁴ One service provider's report estimated Jack had nineteen to twenty-one children from different relationships.

We acknowledge that Jack made some progress in his ability to supervise the children and effectively co-parent with Debra towards the end of the juvenile court proceedings. However, as one service provider testified at the termination hearing, “there’s still a lot of work to go . . . with that.” Our supreme court has recognized that children “should not be forced to endlessly await the maturity of a natural parent.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *Id.*

In this case, Jack’s efforts simply came too late. The changes acknowledged by the service providers in the months before the termination hearing, in light of the seven preceding years, are insufficient. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating evidence of a parent’s past performance may be indicative of the quality of the future care that parent is capable of providing). There was testimony it would take some time before Jack was ready to resume care of his five children, four of whom have significant special needs that were not being adequately addressed when they were in his care even with DHS assistance and supervision.⁵

We conclude that although Jack made recent progress in some areas of concern, the children could not be returned to his care at the time of the hearing without being subject to the threat of neglect or other harm that would cause them to remain CINA. We further conclude, as the juvenile court did, that termination of Jack’s parental rights is in the children’s best interests.

AFFIRMED.

⁵ All of the nine child abuse assessments occurred while the family was receiving services from DHS.