

IN THE COURT OF APPEALS OF IOWA

No. 8-851 / 08-0840
Filed October 29, 2008

**IN THE INTEREST OF M.D.S., E.S., and K.D.D.,
Minor Children,**

J.R.B., Mother,
Appellant,

D.J.S., Father,
Appellant,

J.L.D., Mother,
Appellant.

Appeal from the Iowa District Court for Lucas County, John D. Lloyd,
Judge.

Parents appeal from the order terminating their parental rights to three
children. **AFFIRMED.**

Roberta Chambers of Chambers & Relph Law Firm, P.C., Corydon, for
appellant mother J.D.

Amanda Demichelis of Demichelis Law Firm, Chariton, for appellant
mother J.B.

William Eddy of Eddy Law Firm, Indianola, for appellant father.

Ryan Genest, Des Moines, for appellee L.H.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Paul M. Goldsmith, County Attorney, for appellee State.

Joseph Allwood, Chariton, for minor children.

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

POTTERFIELD, J.

David is the father of Kayla, born in 1998, Michael, born in 2003, and Emily born in 2005. Jessica is the mother of Michael and Emily, while Jenny is the mother of Kayla. Kayla first came to the attention of the Iowa Department of Human Services (DHS) in 2004 after she was sexually abused by her mother's paramour. She was then placed in the care of David. Michael and Emily came to the attention of DHS in 2006 based on a report that David, with whom they and their mother, Jessica, were living, had committed domestic violence at their home. Kayla was also present during this situation. On May 30, 2006, all three children were adjudicated to be in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2005).

On November 16, 2007, the State filed petitions seeking to terminate David's, Jessica's, and Jenny's parental rights to the three children. Following a trial on April 16 and 17, 2008, the court entered a ruling terminating the rights of all three parents. With respect to David, it terminated his parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (f), and (j) (2007). With respect to Jenny, it terminated her rights under sections 232.116(1)(d), (f), and (j). With respect to Jessica, it terminated her parental rights under sections 232.116(1)(d), (e), (f) (Michael) and (h) (Emily). All three parents have appealed from this ruling.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State must prove the circumstances for termination by clear and convincing

evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

David's Appeal. At the time of trial, David was incarcerated as a result of the domestic violence, but was unsure of his release date. He testified that he had no firm date on which he might be released. David claims the court erred in terminating his parental rights because "these children could have been returned to the custody of their mothers." He essentially asserts the order terminating the mother's parental rights should be reversed. David's primary challenge, therefore, is to the termination of Jenny's and Jessica's parental rights rather than his own. We conclude he does not have standing to contest the termination of their rights. *In re A.B., A.B., & A.A.*, 662 N.W.2d 375 (Iowa Ct. App. 2003). As to his rights, we affirm the termination under Iowa Code sections 232.116(1)(d), (e), (f), and (l).

Jenny's Appeal. Jenny argues the State failed to establish that Kayla could not be returned to her pursuant to Iowa Code section 232.102(5)(a), which provides that custody of a child should not be transferred unless without transfer the child could not be protected from physical abuse or from some other adjudicatory harm. Kayla was originally removed from Jenny's custody in 2005 because Jenny had repeatedly exposed her to sexual abuse through Jenny's continuation of a romantic relationship with her paramour. In order to avoid the reaches of DHS after a CINA petition was filed, Jenny fled to the State of

Montana with Kayla and her other children. The court placed Kayla in her father's care after ordering her return to the State of Iowa.

While in Montana, Jenny has been the subject of nine child abuse assessments with her other children. Jenny has received some services in Montana, however she has been largely non-compliant. She has refused to submit to drug testing since September of 2007. Jenny allowed a man who previously had sexually violated one of her young children to have contact with the child after DHS had warned her not to permit that contact. The man violated the child again.

Jenny has a long-standing, chronic substance abuse problem that was identified as an issue at the beginning of Kayla's juvenile proceedings. Her refusal to submit to drug tests is thus particularly troubling. Finally, Kayla has significant mental health issues, including diagnoses of post-traumatic stress disorder and major depression with psychotic features. She is reportedly fearful of her mother. In light of Kayla's fragile mental state, coupled with Jenny's non-compliance with services and the fact she remains involved with juvenile authorities in Montana concerning her other children, we concur in the juvenile court's judgment that Kayla cannot be returned safely to Jenny's custody.

Jenny next maintains the State did not make reasonable efforts to reunite her with Kayla. While she claims DHS "provided NOTHING for [her]," she does not specify any additional services she feels could have benefitted her and promoted the return of Kayla. We reject this claim. It should be noted that Jenny actually fled the State of Iowa in 2004 to *avoid* DHS involvement in her family. While in Montana, authorities there offered services, but she was largely

uncooperative with those services. Under the circumstances, we conclude the State made *reasonable* efforts.

Jessica's Appeal. Jessica first maintains the State failed to establish the statutory requisites to terminate her parental rights under sections 232.116(1)(d), (e), or (h). Upon our de novo review of the record, we find the court properly terminated Jessica's parental rights under section 232.116(1)(e), which among other elements requires a finding that the parent has not "maintained significant and meaningful contact with the child[ren] during the previous six months and ha[s] made no reasonable efforts to resume care of the child[ren] despite having been given the opportunity to do so." Section 232.116(1)(e) further provides that

"significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

While Jessica blames her lack of contact with her children on DHS, we believe the failure to maintain significant contact with her children is largely the product of Jessica's personal choices. Jessica has not had any physical contact with either of her children since November of 2006, when Emily was eleven months old and Michael was three-years nine-months old.¹ In September of 2007, Jessica left Lucas County and moved away from her children to Clinton to live with her mother. Then, in January of 2008 she moved to Louisiana,

¹ Emily has been removed from Jessica's care for all but the first four months of her life. Likewise, Michael has spent little time in Jessica's care and has become bonded with his foster parents.

ostensibly to find a better job; however, she did so without informing either DHS or the children's foster parents. This sudden and unannounced move seriously undermined her ability to visit her children and to make the progress necessary to reassuring DHS and the courts that she can provide a safe and wholesome home to her children. While in Louisiana, Jessica has averaged approximately one phone contact with the children per month and she has not written them any letters. She has not provided any financial support for them. As the juvenile court found, Jessica "has done little if anything to maintain a significant presence in her children's lives."

In addition, some medical evidence indicated that Michael may have been sexually abused. Young Michael said his mother had committed the abuse. It was this incident that led to the suspension of visits between Jessica and Emily and Michael in November of 2006. Jessica has steadfastly denied the abuse. However, even if we were to accept Jessica's denials, we, like the juvenile court, are concerned that Jessica has not taken any initiative to understand Michael's abuse issues and how it has affected his mental status and behaviors. Despite DHS's requests, she has not engaged in any services that would help her cope with Michael's situation. She has not taken serious efforts to maintain contact with the children or make progress in her own personal life. These are not the actions of an individual who has affirmatively assumed the duties of being a parent to Michael and Emily.

Jessica next claims the State failed to make reasonable efforts toward reunifying her and the children. We reject this claim as well. Most significantly, her move to Louisiana made visits with the children virtually impossible and it

inhibited her ability to receive appropriate services from the State of Iowa. As noted above, Jessica avoided services to help her understand Michael's abuse and his behaviors that followed from that abuse. The State's efforts were reasonable under the circumstances.

AFFIRMED.