

IN THE COURT OF APPEALS OF IOWA

No. 9-1070 / 09-1723
Filed January 22, 2010

**IN THE INTEREST OF C.K. and J.K.,
Minor Children,**

J.T.K., Father,
Appellant,

A.K.G., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate
Juvenile Judge.

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

Amanda M. DeMichelis of DeMichelis Law Firm, P.C., Chariton, for
appellant father.

Gordon E. Allen and Jerry Foxhoven of the Drake Legal Clinic, Des
Moines, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, John P. Sarcone, County Attorney, and Christina M. Gonzalez,
Assistant County Attorney, for appellee State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor
children.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

A father, J.K., and a mother, A.G., appeal the termination of their parental rights to their two sons: C.K., born in May 2007, and J.K. Jr., born in July 2008. We affirm.

I. Background Facts and Proceedings.

A.G. and her children became involved with the court and the Iowa Department of Human Services (DHS) in February 2009, upon reports of A.G.'s illegal drug use, homelessness, and exposure to domestic violence. The children were removed from A.G.'s care and placed in the home of their maternal grandmother, under DHS supervision.¹ On February 17, 2009, the court learned A.G. was a minor and was on the run with the children. The court issued a pick-up order directing that the children be taken into immediate custody and placed with the maternal grandmother. On February 21, 2009, A.G. dropped the children off at the home of the maternal grandmother. Several days later, the court modified its prior removal order and placed the children in the custody of DHS for placement in family foster care.² The children were adjudicated children in need of assistance (CINA) on April 16, 2009.

A case permanency plan was established in February 2009, and A.G. has been provided numerous services since that time. However, A.G. was uncooperative, was inconsistent with visitation, and failed to make any significant progress on the case plan. She received criminal charges, was unable to find a

¹ C.K. was developmentally delayed upon his removal from A.G.'s care.

² The maternal grandmother filed a motion to intervene. After a hearing, the court denied the grandmother's motion to intervene, finding that the grandmother's interest was represented by A.G., who wanted the children placed with the grandmother.

permanent place to live, maintained a job at a fast food restaurant for only a month, was inconsistent with visitation, and did not submit to drug testing.

Throughout this time, the children's father, J.K., was incarcerated at the Newton Correctional Facility. J.K. became incarcerated in January 2009 after entering guilty pleas to possession with intent to deliver marijuana and receiving two sentences of five years each, to run consecutively. J.K. had been selling drugs from his home (where A.G. and the children had also been living), and also admitted to domestically abusing A.G. two times.

On August 10, 2009, the State filed a termination petition. On November 2, 2009, after the contested hearing, the court terminated A.G.'s and J.K.'s parental rights to the children pursuant to Iowa Code sections 232.116(1)(b), (d), (e), and (h) (2009). The parents now appeal.

II. Scope and Standard of Review.

We review termination of parental rights *de novo*. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

III. Parental Rights of J.K.

Under section 232.116(1)(b), parental rights may be terminated if the court finds by clear and convincing evidence that the child has been abandoned or deserted. J.K. argues the court erred in terminating his parental rights because the State failed to prove by clear and convincing evidence that he abandoned or

deserted the children as a result of his incarceration and the decisions he made that led to the incarceration.

Although we note that J.K. has attended every hearing either by phone or in person, the record indicates he has failed to make any effort whatsoever to maintain any direct contact with the children. J.K. has not requested visitation with the children. He has not contacted them through letters or cards. J.K. did request the children be placed with his father; however, DHS determined placement of the children with J.K.'s father was not appropriate. We are not persuaded that J.K.'s effort in this regard shows he has not abandoned or deserted the children.

J.K. has not seen the children, or supported the children financially or emotionally, in nearly a year. See *In re Goettsch*, 311 N.W.2d 104, 106 (1981) (noting that parental responsibility is an affirmative duty that "encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child."). J.K. has not made any effort to communicate or establish contact with his children in that time. See *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993) ("When opportunities for association with a child are few, they become more precious, and the spurning of them more egregious. If few opportunities for association are available, spurning all of them will suffice for a showing of abandonment.").

At the time of the termination, J.K. remained incarcerated without an expected release date. Prior to his incarceration, J.K. sold drugs out of the home where A.G. and the children resided. J.K. and A.G. also had a long history of

domestic abuse. J.K. has not shown that he is, or would be within a reasonable period of time, able to parent the children. We are convinced that the children's interests are best served by terminating J.K.'s parental rights and continuing the children's placements in safe and stable homes. Upon our review, we conclude clear and convincing evidence supports termination of J.K.'s parental rights under section 232.116(1)(b), and we affirm on this issue.

IV. Parental Rights of A.G.

Under section 232.116(1)(d), parental rights may be terminated if the court finds by clear and convincing evidence that the circumstances that led to the CINA adjudication continue to exist despite the offer or receipt of services. A.G. argues the court erred in terminating her parental rights because the circumstances present at adjudication no longer exist. A.G. contends she no longer has a substance abuse problem, has a home in which to raise the children, and has removed herself from domestic violence.

We find the record indicates otherwise. A.G. has been provided numerous services since February 2009, including: family drug court, visiting nurse services, family safety risk and permanency services, drug screens, substance abuse evaluation and treatment, individual therapy, visitation, relative placement, foster care placement, and bus tokens. However, she did not fully cooperate with the services offered to her, did not utilize the services in a timely manner, and failed to make any significant progress on the case plan.

Specifically, A.G. failed to complete substance abuse treatment and did not provide UAs. She was inconsistent with visitation. A.G. was supposed to

have supervised visits with the children for three hours, twice a week. However, she missed one full month of visits and only attended three visits in August. She did not make adequate progress to increase to unsupervised visits.

On July 29, 2009, A.G. entered a guilty plea to theft in the fifth degree and assault with a weapon, and was placed on probation for two years. A.G. continued to be in denial of her inadequacies as a parent and provider, showed a lack of insight, and made poor decisions. A.G. had maintained a job at a fast food restaurant in the month prior to termination; however, the record suggests that she called in sick to work and may not be a reliable employee. A.G. was unable to find a permanent place to live, and continued to have potentially harmful relationships with men. Although placement in House of Mercy was recommended and would allow her to regain custody of the children, A.G. refused to cooperate with those services.

Upon our review, we find the record clearly supports A.G.'s inability to provide a safe environment for the children, and returning the children to her care is not an option. The circumstances that existed at the time of adjudication continue to exist. There continue to be major concerns about A.G.'s use of illegal drugs, parenting skills, choices in relationships, and lack of responsibility for the harms she places on the children. We conclude clear and convincing evidence supports termination of A.G.'s parental rights under section 232.116(1)(d), and we affirm on this issue.

V. Conclusion.

We affirm the termination of J.K. and A.G.'s parental rights.³

AFFIRMED.

³ We conclude the evidence clearly and convincingly proves the section 232.116(1)(b) grounds for termination of J.K.'s parental rights to the children, and the section 232.116(1)(d) grounds for termination of A.G.'s parental rights to the children. Therefore, we need not address whether the evidence also supports termination of their parental rights pursuant to the remaining sections found by the juvenile court. *See In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (holding that when trial court terminates on more than one statutory ground we need only find grounds to terminate under one of the provisions relied on by the juvenile court in order to affirm).