

IN THE COURT OF APPEALS OF IOWA

No. 9-509 / 09-0516

Filed July 2, 2009

**IN THE INTEREST OF J.E.C. and K.A.L.B.,
Minor Children,**

**C.J.B., Father,
Appellant,**

**M.E.S.J.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Stephen Gerard,
District Associate Judge.

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

Raymond Tinnian, Kalona, for appellant father.

Ryan Tang, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant
County Attorney, for appellee State.

Sally Weyer, Iowa City, for minor children.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MAHAN, P.J.

Cassidy and Michelle appeal the district court's order terminating their parental rights to four-year-old J.E.C and three-year-old K.A.L.B. We affirm.

I. Background Facts and Proceedings.

J.E.C. and K.A.L.B. are the children of Cassidy and Michelle.¹ Cassidy and Michelle are not married and have no plans to marry. The facts surrounding the instant case came to the attention of the Iowa Department of Human Services (DHS) in March 2006, when K.A.L.B. tested positive for marijuana at her birth. J.E.C. also tested positive for exposure to marijuana at that time. On May 31, 2006, all parties stipulated to the children being adjudicated children in need of assistance (CINA).² A case permanency plan was adopted, and Cassidy and Michelle were provided parenting classes and numerous other services. The children remained in their custody.

However, in February 2007, the State, guardian ad litem, and DHS began to express concerns about the family's progress. On May 30, 2007, the court ordered removal from the parents' home as a result of the parents' lack of

¹ Cassidy and Michelle are the biological parents of J.E.C. Michelle is the biological mother of K.A.L.B.; however, the child's biological father is unknown. The court terminated any parent-child relationship Cassidy and Michelle may have as to both children.

Michelle has four children other than J.E.C. and K.A.L.B. Michelle's nine-year-old and six-year-old sons have been placed with their fathers and it is unclear how much contact Michelle has with them. Furthermore, in December 2008, Michelle gave birth to twin boys, fathered by Cassidy. Michelle tested positive for marijuana early in that pregnancy. The twins were born prematurely and have health problems. They were removed from the parents' care shortly after their birth and remain in family foster care. Cassidy is also named as the putative father of a four-year-old daughter from a different relationship, who lives with her mother.

² This family was first involved with DHS in November 2004, when J.E.C. tested positive for marijuana at her birth. At that time, a voluntary services case was opened. The family also had various other issues of concern, including housing instability, dirty home, unresolved head lice and drug use. The voluntary services case was closed in 2005.

cooperation with the case plan, failure to place the children in protective daycare, ongoing inadequate supervision of the children, and continued use of tobacco in the home. The children were placed in family foster care.³

In July 2007 the children were returned to the parents after the court determined that although Cassidy and Michelle had been slow in accomplishing goals established in the case permanency plan, they were “minimally adequate” parents.⁴ In December 2007, however, Michelle contacted the family’s DHS caseworker and requested the children be voluntarily placed back in foster care as the family was being evicted from their apartment that day. The children returned to family foster care on December 10, 2007, where they have remained since.

The parents have been homeless for the majority of the time since the children’s removal, living with various family members and friends. Eventually, in October 2008, the parents were able to obtain their own apartment with the assistance of local housing authorities. The parents do not own a vehicle and neither has a valid driver’s license. Cassidy has a limited IQ and functions at the level of a fourth grader. He had been employed at the Marriott Hotel in Coralville for approximately two years at the time of termination. Michelle had not maintained employment consistently for more than a few months at a time.

³ When the children were placed in family foster care, they were found to have head lice, scabies, a fungal/viral dermatologic condition, and their immunizations were not current. However, the children’s daycare noticed that placement in family foster care “led to marked improvement in the behavior of each child and addressed numerous medical conditions that had apparently gone unnoticed in the biological home.”

⁴ Upon the children’s return to the parents’ home, the children’s daycare began to once again report problems with head lice. Against the advice of DHS, Michelle removed the children from the preschool-like daycare and placed them with an in-home care provider.

The parents have received visitation services with the children throughout this case. Michelle can be an appropriate caregiver for short periods of time; however, there are major concerns that she is unable to care for the children and the newborn twins. Michelle has a history of substance abuse and mental health issues. However, when questioned, Michelle has stated that she does not remember whether she has used drugs or alcohol throughout these proceedings. Cassidy has never requested unsupervised visitation. Although he was offered a full range of services, he has not gained any higher level of functioning as a care provider. Due to his mental limitations, Cassidy has been unable to parent the children alone or be a primary care provider for the children. He has stated that he believes he is a better parent while he is high on drugs.

On October 15, 2008, the State filed a termination petition. Michelle signed a release of custody a week before the hearing was scheduled to begin, but her attorney subsequently advised DHS that she had revoked the release. After the contested hearing, the court terminated Cassidy's and Michelle's parental rights on March 23, 2009, pursuant to Iowa Code sections 232.116(1)(f) and (h) (2007). 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, 650-51 (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 children. *Id.*

III. Parental Rights of Cassidy.

Cassidy's appeal was not timely filed. On May 29, 2009, our supreme court issued an order dismissing Cassidy's appeal. See Iowa R. App. P. 6.201(1)(b) (2009).

IV. Parental Rights of Michelle.

Under section 232.116(1)(f), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is four years of age or older; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days; and (4) the child cannot be returned to the custody of the parents at the present time. Likewise, under section 232.116(1)(h), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three years of age or younger; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the parents for at least six of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days; and (4) the child cannot be returned to the custody of the parents at the present time. Michelle argues the State failed to prove by clear and convincing evidence that the children cannot be immediately returned to her care.

Michelle has been involved with DHS for nearly five years. She has received numerous services to reduce and eliminate the adjudicatory harms present in her home. The children have been out of Michelle's care since

December 2007. Michelle was homeless over the next ten months and has not maintained employment consistently for more than several months at a time. Since their last removal, Michelle has not requested the children to be returned to her care, and she has not had any unsupervised visits with the children.

Michelle's two oldest children have already been placed with their respective fathers. Furthermore, in December 2008, Michelle gave birth to twins, adding to her inability to manage all her children on her own. She initially decided to consent to termination of her parental rights of J.E.C. and K.A.L.B. because she believed she would then be able to retain custody of the twins. Since their birth, the twins have been adjudicated CINA. Furthermore, despite DHS concerns that Cassidy cannot parent all the children by himself, Michelle continues to express her belief that Cassidy is capable of providing appropriate care for the children on his own. As the juvenile court stated:

Despite the problems they were having providing care for and meeting the needs of [J.E.C., K.A.L.B., and their older brother], Michelle twice became pregnant during the pendency of these cases and now has delivered twins. Cassidy and Michelle were unable to adequately supervise and care for three children and now face the responsibility for a total of four children including newborn twins. The evidence is clear and convincing that Cassidy and Michelle will not be able to adequately parent these children now, or at any foreseeable time in the future. It is in the best interests of J.E.C. and K.A.L.B. that parental rights be terminated so that permanency can be established for them.

We agree. There continue to be major concerns about Michelle's mental instability, parenting skills, choices in supervision for the children, and lack of responsibility for the harms she places on the children. Although Michelle clearly loves the children and the children are bonded to her, Michelle has many issues to address and improve on before she could safely and effectively parent the

children. J.E.C. and K.A.L.B. have been out of her care for approximately eighteen months. Michelle has not demonstrated significant improvement over many months of services.

Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). The record clearly supports Michelle's inability to provide a safe environment for the children, and returning J.E.C. and K.A.L.B. to her home is not an option. We are convinced that J.E.C. and K.A.L.B.'s interests are best served by terminating Michelle's parental rights and continuing the children's placements in safe and stable homes. There is no reason to further delay the children the permanency they need and deserve. We find clear and convincing evidence supports termination of Michelle's parental rights under sections 232.116(1)(f) and (h), and we affirm on this issue.

AFFIRMED.