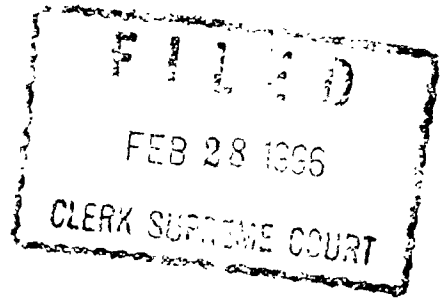


IN THE COURT OF APPEALS OF IOWA

No. 5-740 / 95-753

IN RE P.J.K., J.K.K., and A.J.K., Minor Children,

L.K., Mother,  
Appellant.



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

L.K., the mother, appeals from a termination of her parental rights to P.J.K.,  
J.K.K., and A.J.K. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant  
Attorney General, and Heather Dickinson, Assistant County Attorney, for appellee.

Robert E. Tucker, Des Moines, guardian ad litem for minor children.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

**CADY, J.**

This appeal follows a decision by the juvenile court terminating the parental rights of Laureen and Samuel to the youngest three of their six children, Phillip, Joyce and Anthony. Phillip and Joyce are twins, born December 2, 1989. Anthony was born February 23, 1991. Both Laureen and Samuel appealed the termination decision, but Samuel's appeal was eventually dismissed. We affirm the decision to terminate Laureen's parental rights.

Phillip, Joyce and Anthony were adjudicated children in need of assistance (CINA) in November 1992, after their older sisters were repeatedly sexually abused by Samuel and Laureen refused to protect the girls from him. Abundant evidence also showed the parents used crack cocaine around the children. Some of the children tested positive for cocaine.

The children were initially placed in Laureen's custody with supervision by the Department of Human Services (DHS). Samuel was ordered to have no contact with the children. After Laureen failed to comply with the no-contact order, the children were removed from her care in May 1993.

Laureen maintained visitation of the children until July 1993, then stopped. She also entered two substance abuse treatment facilities, but continued to use cocaine following the treatment. She was arrested and incarcerated for prostitution on two occasions. In March 1994, Laureen was transferred to a half-way recovery house where she continued to reside at the time of the termination hearing in February

1995. In August 1994, Laureen began weekly supervised visits with the children. In September, the State filed a petition to terminate her parental rights under Iowa Code sections 232.116 (1)(d); 232.116 (1)(e); and 232.116 (1)(g) (1993).

Laureen abstained from using drugs while at the half-way house. She was also steadily employed and intended to secure an apartment once released from the facility. Her December 1994 discharge date was extended, however, after it was discovered she had been associating with known, active drug users outside the house. She completed a parenting course, but has saved little money.

Following a hearing, the juvenile court terminated the parental rights of Laureen and Samuel. The court found the children had been adjudicated CINA, were removed from the house for the requisite period of time, and satisfied the age requirements for termination. The court also found the parents failed to maintain significant and meaningful contact with the children during the previous six months and the children could not presently be returned to the custody of their parents.

On appeal, Laureen argues the court should not have terminated her rights under section 232.116 (1)(d) because the evidence did not support a finding she failed to maintain meaningful visitation with the children. She also asserts termination was improper under sections 232.116 (1)(e) and 232.116(1)(g) because the evidence failed to support a finding the children would suffer harm if they were returned to her custody.

### **I. Significant Contact**

Our review of the record reveals Laureen did not fail to maintain "significant and meaningful contact with the [children] during the previous six consecutive months." Iowa Code § 232.116 (1)(d) (1993). Although she failed to visit the children for a year prior to August 1994, Laureen maintained regular weekly visitation for the six months prior to the conclusion of the termination hearing in February 1995. She missed no visits since the visitation schedule was established in August. Accordingly, we conclude Laureen's parental rights should not have been terminated under section 232.116 (1)(d). See *In re T.A.L.*, 505 N.W.2d 480, 484 (Iowa 1993).

## **II. Return of Custody**

The fighting issue in this case then turns to whether there is clear and convincing evidence the children could not be returned to Laureen as provided by section 232.102 at the present time. Having carefully considered this issue, we agree with the juvenile court Laureen's parental rights should be terminated under sections 232.116 (1)(e) and 232.116 (1)(g).

Although we tackle this issue de novo, we give wight to the finding of the juvenile court. *In re C.W.*, 522 N.W.2d 113, 116 (Iowa App. 1994). The juvenile court, despite evidence of Laureen's progress since residing at the half-way house, found Laureen was "no more prepared to safely and appropriately parent" the children at the time of the termination hearing than when the children were removed from her care in May 1993. We recognize this finding is a product of an assessment not fully available to us on appeal.

Moreover, the evidence clearly and convincingly shows the children cannot be returned to Laureen at this time. Laureen resides in a half-way house as the result of a criminal sentence. She has been in the facility for nearly a year and her expected release date was extended after she began to associate with active drug users. The facility rules do not permit children to reside in the facility. Furthermore, Laureen even acknowledged she would be unable to care for the children immediately following her release from the facility.

We acknowledge Laureen has made progress while in the half-way house. At the same time, we are faced with evidence she has been unable to stay off drugs outside a recovery facility. Laureen began using drugs following her two prior inpatient treatment programs during the DHS supervision of her case. Laureen has also been unable to fully come to grips with the sexual abuse perpetrated on her children by Samuel. She maintains no indignation towards him for his action or the harm inflicted on the children, yet believes the children would be safe in his care.

The children's situation, in the meantime, has become urgent. They have been out of the home for nearly two years. They need stability. They also are adoptable. Consequently, we must view the case with the same sense of urgency. *See In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). Children should not be forced "to suffer indefinitely in a parentless limbo." *Long v. Long*, 255 N.W.2d 140, 146 (Iowa 1977).

We conclude the children could not be returned to Laureen's care at this time. The statutory prerequisite for termination under sections 232.116 (1)(e) and 232.116 (1)(g) have been met.

**AFFIRMED.**