

IN THE COURT OF APPEALS OF IOWA

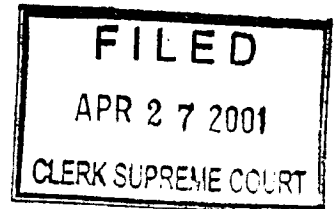
1-053 / 00-1050
Filed April 27, 2001

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

**L.A., Mother,
Appellant,**

**C.D., Father of B.A. and C.A.,
Appellant.**

**B.H., Father of J.A.,
Appellant.**



Appeal from the Iowa District Court for Polk County, Cynthia A. Moisan,
Associate Juvenile Judge.

The mother and two fathers appeal the termination of their parental rights
to their children. **AFFIRMED.**

Todd E. Babich of Babich & Renzo, P.C., Des Moines, for appellant L.A.

Patricia K. Wengert of Tom Whitney Law Offices, Des Moines, for
appellant, C.D.

J. Michael Mayer, Des Moines, for appellant B.H.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Martha Johnson, Assistant County Attorney, for appellee-State.

Michael Sorci, Des Moines, guardian ad litem for minor children.

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

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ZIMMER, J.

The mother and two fathers appeal the termination of their parental rights to their children. The mother claims she was not offered services to correct the circumstances that led to adjudication, she was not given the opportunity to maintain significant and meaningful contact with her three children, and the State did not prove the children could not be returned to her care. The father of the two oldest children claims the State failed to show the children could not be returned to his care or the mother's care and the State failed to make reasonable efforts to reunite the family. The father of the youngest child asserts he was not provided appropriate services and the State failed to prove the child could not be returned to his care. We affirm on all three appeals.

CINA background. Lisa is the mother of Brandon, born in February 1992, Catherine, born in February 1993, and Joshua, born in September 1996. Charles is the father of Brandon and Catherine; Brett is Joshua's father. All the parents and children were living together at the time of the initial removal of the children. Starting in 1993, Lisa and Charles were the subject of six founded child abuse reports for lack of critical care. The sixth, in 1998, involved burns Catherine received on her chest, for which both Lisa and Charles were arrested. Lisa later was charged and pled guilty to child endangerment. Catherine is a special-needs child. She has a low I.Q. and is diagnosed with a variety of physical, mental, and emotional problems such as autism, ADHD, and fetal alcohol syndrome. On December 31, 1998 the court ordered the children removed from the home. A review hearing on the temporary removal was held on January 7, 1999. The district court confirmed the temporary removal and

ordered Lisa to have no contact with the children pending further order of the court. Charles was allowed supervised visitation at the discretion of DHS, in the event a no-contact order was not entered by the criminal court.

On February 26, 1999, the Juvenile Court ordered Charles to complete a psycho-social evaluation and follow any and all recommendations. On March 25, 1999, the State filed a motion requesting a finding waiving reasonable reunification efforts. The matter was set for hearing at the same time as the adjudicatory hearing. Charles filed a motion requesting supervised visits on April 23, 1999. Lisa filed a motion for supervised visitation on May 6, 1999, requesting she be allowed supervised visits in the event the criminal court lifted the no contact order in effect. In contrast to Lisa's assertions in her affidavit of paternity that Charles was the father of all three children, paternity testing in April 1999 established Brett as Joshua's biological father.

On May 21, 1999, the court denied Lisa's motion for visitation finding that no visitation should occur between Lisa and the children "until such time as she has entered into treatment and the court finds that she has made substantial progress towards dealing with the issues of abuse and neglect which have brought the children into foster care in the first place." The court also ordered Lisa to complete a psycho-social evaluation and follow any and all recommendations.

The adjudicatory hearing was held on May 25, 1999. By stipulation, Brandon, Catherine and Joshua were adjudicated as children in need of assistance under Iowa Code section 232.2(6)(c)(2). Adjudication under Iowa Code section 232.2(6)(b) was withheld. The children continued in foster care.

On June 30, 1999, a dispositional hearing was held. The court determined that continued placement out of the parental home was necessary and in the best interests of the children. The court ordered Lisa, Charles and Brett to comply with the recommendations of the case permanency plan. The court also ordered that there be no contact between the parents and the children until further order of the Court. None of the parents appealed this order.

At the review hearing on August 11, 1999, Brandon, Catherine and Joshua were confirmed to be in need of assistance and the prior removal and custody orders were confirmed and continued. The court ordered that no visitation, including supervised visitation, occur "until such time as the parents have entered into individual therapy and made substantial progress in dealing with the issues of abuse and neglect of the children." The court ordered Lisa to complete a substance abuse evaluation, to follow any recommendations, and to provide UAs when DHS requested. The court ordered Charles to complete a psychiatric evaluation, to follow any additional recommendations, and to provide UAs at the request of DHS. The court ordered Brett to provide UAs at the request of DHS and to participate in individual therapy.

At the review hearing October 25, 1999, the court confirmed the children to be in need of assistance and continued foster placement. The court found individual therapy for the parents and children and substance abuse treatment for the parents had been provided to the family. The court also found additional services, such as intensive family preservation or family-centered services were not provided because "services were judged to be unlikely to be successful in

removing the problems" which led to the children's removal. The court ordered DHS to provide individual therapy for the parents.

The State filed petitions to terminate the parental rights of Lisa, Charles and Brett to their respective children on January 6, 2000. The State requested termination of Lisa's parental rights to the children under Iowa Code sections 232.116(1)(c), (d), (e) and (g). The State requested termination of Charles' parental rights to Brandon and Catherine under Iowa Code sections 232.116(1)(c), (d) and (e). The State requested termination of Brett's parental rights to Joshua under Iowa Code sections 232.116(1)(c), (d) and (g).

After hearings on April 14 and May 1 the court terminated Lisa's rights to Brandon and Catherine under Iowa Code sections 232.116(1)(c), (d), and (e) and her rights to Joshua under sections 232.116(1)(c), (d), and (g). It terminated Charles' rights to Catherine and Brandon under sections 232.116(1)(c), (d), and (e); and Brett's rights to Joshua under sections 232.116(1)(c), (d), and (g). Lisa, Charles, and Brett all appeal the terminations.

Appellate claims. A. *Lisa.* Lisa's general claim is that the State did not provide clear and convincing evidence her parental rights should be terminated. Within that broad claim, she argues (1) the State did not provide services to correct the problems leading to the children's adjudication because it did not offer her the opportunity to maintain a place of significance in her children's lives; (2) the State denied even supervised visitation; (3) her therapist and the children's therapist did not communicate to develop a plan for visitation and family reunification; and (4) the court incorrectly found Lisa did not make reasonable efforts to comply with the requirements to allow reunification of the family.

B. Charles. Charles argues the court incorrectly relied on slow compliance with the case permanency plan as an independent ground for termination. He also claims the State failed to make reasonable efforts to reunite the family in that it did not allow even supervised visitation and the therapists involved did not communicate to develop a plan for visitation.

C. Brett. Brett came into the proceedings in April 1999 when paternity testing revealed he was Joshua's father. Prior to that time, Brett believed Charles was Joshua's father. In line with the claims of Lisa and Charles, Brett claims the State did not present clear and convincing evidence his parental rights should be terminated. He argues (1) the State did not provide reasonable services to correct the circumstances which led to the CINA adjudication; (2) he was not afforded an opportunity to maintain a significant relationship with Joshua because he was denied any visitation; and (3) the therapists failed to devise a definite plan for reunification.

Discussion. The central thrust of all the claims of all three parents is that, despite their efforts to comply with the requirements of the case permanency plan and the significant progress they made, no provision for even supervised visitation was made and no plan was developed for beginning such visitation. Therefore, despite their best efforts, they were denied the opportunity to maintain a relationship with their children or to demonstrate the children could be returned to their care. The State's response is that the parents all failed to comply consistently with the requirements to participate in therapy and to provide clean UAs, therefore it was proper not to initiate even supervised visitation, but rather to terminate the parent's rights to their children.

All three parents have substance abuse problems which affect their ability to parent. All three failed to be consistent in participating in therapy or in providing clean UAs. All three point to external factors such as job scheduling conflicts or transportation problems as reasons for their failure to comply fully with the case permanency plan requirements. Yet over the course of sixteen months they made little progress in dealing with their substance abuse, even though they knew they must demonstrate significant progress before they would be allowed visitation. The parents all allege they made genuine efforts to complete the responsibilities of the case permanency plan. They argue they did as much as they could, but the State failed to follow through on its responsibility to seek and promote family reunification. The State responds by pointing to the number of missed appointments for therapy and the number of missed or dirty UAs as evidence the parents did not make a genuine effort to comply and did not make significant progress in dealing with their substance abuse.

From our de novo review of the evidence, it appears all three parents have made little progress in dealing with their substance abuse and the parenting issues caused by that abuse. Without progress toward resolving the parenting issues of abuse and neglect, the children cannot safely be returned to their parents' care. That satisfies the requirement of sections 232.116(1)(e) and (g). Without progress toward resolving the parenting issues of abuse and neglect, the requirements of 232.116 (1)(c) are satisfied. When the district court terminates a parent's rights on more than one statutory ground, we may affirm if the evidence supports termination on any of the grounds. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We affirm the termination of Lisa's and Charles's parental

rights to Brandon and Catherine under Iowa Code sections 232.116(1)(c) and (e). We affirm the termination of Lisa's and Brett's parental rights to Joshua under Iowa Code sections 232.116(1)(c) and (g).

AFFIRMED.