

IN THE COURT OF APPEALS OF IOWA

No. 1-917 / 11-1649
Filed December 7, 2011

**IN THE INTEREST OF K.H.,
Minor Child,**

D.D., Mother,
Appellant,

D.H., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother and father appeal the termination of their parental rights to their
child. **AFFIRMED.**

Aaron H. Ginkens of Ginkens & McConnell, P.L.C., Clive, for appellant
mother.

Nathaniel A. Tagtow of Pargulski, Hauser & Clarke, P.L.C., Des Moines,
for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Andrea S. Vitzthum,
Assistant County Attorney, for appellee State.

Jami J. Hagemeier of Williams & Blackburn, P.L.C., Des Moines, attorney
and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

A mother and father appeal the termination of their parental rights to their child, born in 1998.

I. Mother

The mother contends: (1) termination was not in the child's best interests, (2) the juvenile court should not have terminated her rights, given the bond she shared with her child, and (3) termination was not warranted because the child was over ten and objected to the termination. See *In re P.L.*, 778 N.W.2d 33, 37–38 (Iowa 2010). The record does not support these assertions, which we will address together.

The child and her two siblings were removed from the mother's care in 2007 based on the mother's alcohol use, which resulted in three public intoxication arrests within a six-week period. The mother later consented to the removal, and the children were transferred from a youth shelter to foster care.

The child was moved several times between 2007 and mid-2010. At one of the foster homes where all three siblings were placed, the child was sexually abused by her brother. Later, the child disclosed to her therapist that, when she was very little, her father also sexually abused her. She further disclosed that her father threw her mother across the room on more than one occasion.

The child was eventually placed in a foster home that she hoped would become her adoptive home. She remained there for the fourteen months preceding the termination hearing. Notwithstanding this more stable setting, the child struggled academically and emotionally, acting out to the point that she was almost expelled from the middle school she attended.

Meanwhile, the mother underwent a substance abuse evaluation and treatment and initially participated in visits, to the extent they were provided. Although the number of visits was later increased, the mother's participation waned. At the termination hearing, she admitted to having no face-to-face contact with her daughter for approximately sixteen months.

The mother also admitted that she moved in with the child's father before the termination hearing. She did so despite her knowledge of the child's sex abuse allegations against him as well as their son's allegations of physical abuse at his hands. She denied that the father had also abused her, minimizing earlier complaints that resulted in the issuance of a no-contact order between the parents. In short, she refused to acknowledge any safety concerns if the child were returned to the home.

At the termination hearing, the child's therapist declined to recommend any unsupervised contact between mother and child and an Iowa Department of Human Services child protective services worker stated the child was clear about her wish to be adopted.

Based on this record, we conclude termination of the mother's parental rights to this child was warranted.

II. Father

The father contends: (1) the State failed to prove that the child could not be returned to his custody, as found by the juvenile court, see Iowa Code § 232.116(1)(f) (2011), (2) termination was not in the child's best interests, (3) termination was not warranted given the child's age and her objection to

termination, and (4) the juvenile court erred in quashing his subpoena directed to the child. We will address the first three issues together.

The father was the subject of a founded child abuse report based on an incident involving his son, a prior no-contact order for domestically abusing the child's mother, a founded child abuse report based on an investigation of this child's sex abuse allegations, and a no-contact order with this child. He conceded he had not seen his daughter for more than a year.

The child's therapist testified that the child feared her father and did not want to have any contact with him. While she and a department employee agreed the child did not specifically express a desire to have her father's parental rights terminated, they noted that she wished to be adopted.

Based on this record, we agree with the juvenile court that (1) the child could not be returned to the father's custody, (2) termination was in the child's best interests, and (3) the child's desires did not militate in favor of deferring termination. We turn to the subpoena issue.

Prior to the termination hearing, the father served the child's attorney with a subpoena to compel the child's appearance at the hearing. The child's attorney moved to quash the subpoena. In support of the motion, she called the child's therapist, who testified that the child did not want to come to court. She opined that the court appearance would be "difficult and traumatic" for the child.

The juvenile court ruled that the child "should not be expected to come to court and testify in open court or in chambers." The court found "that requiring her to do that will further traumatize her, cause her to regress emotionally, behaviorally, and therapeutically, and would be unlikely to result in any kind of

credible or articulate testimony, given her functioning level.” Based on the therapist’s testimony, we fully concur in this assessment and ruling.

We affirm the termination of the parents’ rights to this child.

AFFIRMED.