

IN THE COURT OF APPEALS OF IOWA

No. 2-728 / 12-1171
Filed September 19, 2012

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

D.D., Mother,
Appellant,

D.D.H., Father,
Appellant.

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

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

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Attorney General, John Sarcone, County Attorney, and Andrea S. Vitzthum,
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Nancy Pietz, Des Moines, attorney and guardian ad litem for minor child.

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

BOWER, J.

A mother and a father separately appeal the termination of their parental rights to their child. They contend termination is not in the child's best interests. The father also contends the grounds for termination were not proved by clear and convincing evidence.

Termination of the father's parental rights is appropriate pursuant to Iowa Code sections 232.116(1)(b) and (e) (2011). We also find termination is in the child's best interests. Because none of the factors set forth in section 232.116(3) exist, we affirm the termination of both parents' rights.

I. Background Facts and Proceedings.

C.H. was born in 1996. C.H., along with two siblings, came to the attention of the juvenile court on June 1, 2007, when the court ordered the children's temporarily removal. The reason for the removal was the mother's alcohol abuse and the father's physical abuse. At the time, the parents were divorced. The mother had obtained a protective order against the father in August 2005 due to his domestic violence.

The parents were offered services to address their deficiencies, but the father continued to exhibit anger management problems. The mother resisted participating in therapy and had no housing. After two-and-one-half years, the mother stopped participating in services and had no contact with the children.

In January 2011, it was learned that C.H.'s sister had been sexually abused by the father. A no-contact order was entered, prohibiting the father from contacting C.H. It was also learned that C.H.'s brother had sexually abused both

C.H. and C.H.'s sister. Despite a confession from the brother, both parents do not believe that the abuse occurred. The mother does not believe the father sexually abused C.H.'s sister or physically abused C.H.'s brother. The mother moved into the father's residence in May 2011.

In July 2011, the State filed a petition to terminate both parents' rights to C.H. and the sister. A month later, the State filed a notice of intent not to prosecute the termination of parental rights with regard to C.H. due to C.H.'s therapist's recommendation; C.H. was not attached to the current foster home caretakers and did not want to be adopted. The therapist recommended keeping C.H. in long-term foster care. Because C.H. was fifteen years old at the time, the State afforded C.H.'s opinion considerable weight. The termination petition regarding C.H.'s sister was prosecuted and both parents' rights were terminated with regard to the sister.

In April 2012, C.H. was placed in the care of a former foster parent with whom C.H. had formed a bond. It was planned that this foster parent would adopt C.H. The State filed a termination of parental rights petition with respect to C.H. on April 23, 2012, and hearing on the matter was held on June 1, 2012. The juvenile court found the State proved the grounds for termination pursuant to sections 232.116(1)(b), (e), (f), and (g) with respect to both the mother and the father. It further found termination was in C.H.'s best interest and that none of the factors listed in section 232.116(3) weighed against termination.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" where there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

The father contends the State failed to prove the grounds for termination pursuant to sections 232.116(1)(f) and (g) (2011) by clear and convincing evidence. We need only find grounds to terminate under one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). Because the father does not contest the State proved the grounds for termination under sections 232.116(1)(b) or (e), we can affirm on these grounds. See Iowa R. App. P. 6.903(2)(g)(3).

Both the mother and father contend termination is not in C.H.'s best interests. In determining what is in the child's best interests, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (citing Iowa Code § 232.116(2)).

It is important to fix child custody quickly as children should not be made to suffer indefinitely in parentless limbo. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Children should not be forced to suffer in parentless limbo based on the hope the parents will finally face up to their problems. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986). C.H. has been in foster care for five years. Long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). The parents had not had contact with C.H. for more than a year before termination and, given their failure to participate in services and make improvements, there is no hope they will ever be able to demonstrate an ability to parent C.H. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (holding that when considering what the future holds if the child is returned to the parent, we must look to the parent's past behavior because it is indicative of the quality of care the parent is capable of providing in the future). The child's best interests require termination.

A termination that is otherwise warranted may be avoided if any of the factors set forth under section 232.116(3) exist. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991), *overruled on other grounds by P.L.*, 778 N.W.2d at 39). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. The words "need not terminate" are clearly permissive. *Id.* The court has discretion, based on the unique circumstances of each case and the best interests of the

child, whether to apply the factors in this section to save the parent-child relationship. *Id.*

The mother argues termination should be avoided under section 232.116(3)(c). This paragraph provides the court need not terminate parental rights where termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). The mother cannot demonstrate any close bond between herself and C.H. where she has abandoned C.H., as the State proved. Although C.H. did not wish to have parental rights terminated in August 2011 due to circumstances at that time, those circumstances have changed. C.H. is now in a pre-adoptive foster home and is bonded with the foster parent. C.H. appeared at the termination hearing and supported termination of both parents' rights. As the juvenile court found,

It defies logic to conclude that there is a close bond, or healthy bond of any kind between [C.H.] and [C.H.'s] parents given the clear facts to the contrary. [C.H.] wants to sever ties with [the] birth parents once and for all. [C.H.] fears [the father] and feels abandoned and betrayed by [the mother] who reunified with [the father].

The evidence supports this finding, which we adopt as our own.

The State proved the grounds for termination by clear and convincing evidence. Termination is in C.H.'s best interests and none of the factors set forth in section 232.116(3) are present. Accordingly, we affirm the order terminating the mother and father's parental rights.

AFFIRMED ON BOTH APPEALS.