

IN THE COURT OF APPEALS OF IOWA

No. 8-1063 / 08-1818
Filed December 31, 2008

**IN THE INTEREST OF H.H. and B.H.,
Minor Children,**

C.H., Father,
Appellant,

A.J., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

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

Jennifer L. Oetker of Parrish Kruidenier Dunn Boles Gribble Parrish
Gentry & Fisher, L.L.P., Des Moines, for appellant-father.

Thomas P. Graves of Graves Law Firm, P.C., West Des Moines, for
appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Cory McClure,
Assistant County Attorney for appellee.

Jessica Miskimins, Des Moines, guardian ad litem for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

A mother and a father have filed a petition on appeal challenging an October 24, 2008 order terminating their parental rights to their two daughters, born in August of 2002 and April of 2005. They both contend there is not clear and convincing evidence supporting termination and that termination is not in the children's best interest. We affirm.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 6.14(6)(g). The primary interest in termination proceedings is the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

The family first came to the attention of the Department of Human Services in June of 2004. The father, who had a history of drug use, had assaulted the mother and threatened both the mother and the older daughter with a knife. In October of that year that child was found to be a child in need of assistance but she was left in the custody of her mother. An order was entered on October 4, 2004, ordering that the father have no contact with the mother, but it was cancelled eight days later. The younger child was born in April of 2005

and found to be a child in need of assistance in June of that year. The children remained in their mother's care until July of 2006 when the mother tested positive for methamphetamine and failed to meet with in-home providers for several months. The children were returned to their mother in November of that year. In March of 2007 the mother entered the House of Mercy program, but she left it in June of 2007. On September 10, 2007, she tested positive for cocaine and the children were again removed from her care on September 14, 2007. Since that time she has not followed recommendations directed to her drug use. At the time of the termination hearing on September 26, 2008, the children had been out of her care for a year. The children have not been in their father's care since the initial removal. At the time of the termination hearing he was incarcerated and had eighty-eight more days to serve before his release.

The father challenges the juvenile court's finding that his parental rights should be terminated under Iowa Code sections 232.116(1)(f) and (h) (2007). The only factor under each of these sections that is disputed is whether there is clear and convincing evidence that the children cannot be returned to his custody. The father did not seek immediate custody and admitted that the children could not be returned to his care at the time of the hearing because he was incarcerated. There is clear and convincing evidence the children cannot be returned to his care.

The mother challenges the termination of her parental rights under Iowa Code sections 232.116(2)(f) and (h), contending the State failed to prove by clear and convincing evidence that at the present time the children could not be

returned to her custody. She contends the juvenile court's finding they could not be returned is not supported by clear and convincing evidence, and that the court failed to find facts to support its conclusion.

The mother's case presents a closer issue. She has an apartment and a job. There was testimony she had good parenting skills. The children are bonded to her. Since the children entered foster care she has had two scheduled supervised visits with the girls a week. One of the weekly visits was at the Life Works office and the second in her home supervised by her sister. This was a four-hour visit that was expanded to six hours after an August 15, 2008 hearing.

The major problem centers on the mother's continual use of illegal drugs. She had admitted drug use and tested positive for methamphetamine use in mid-2006. In the year prior to a September 12, 2008 report her failure to provide negative drug tests was an issue. Before drug testing became free to persons in her situation on July 1, 2008, she failed to appear for twenty-five out of forty-nine tests and she offered no excuse for her absences. She also failed to appear for three tests she was scheduled to take in July of 2008 and three tests she was scheduled to take in August of that year. Her tests were positive on September 3, 2008 and September 11, 2008. She has had several substance abuse evaluations during the course of these proceedings. She had been admitted to the House of Mercy residential treatment program in April of 2007 but left without notice in June of that year. She completed an extended outpatient treatment on January 18, 2008. She claimed to have an AA sponsor in 2008 but when the

department checked, the sponsor said she met the mother at a meeting but had no further contact with her and was not her sponsor. The woman also stated that she had been active in the recovering community for nineteen years and had no knowledge of the mother being involved in it. The mother also has some unresolved mental problems. The mother's lack of candor, her failure to appear for scheduled drug tests, and the two recent positive tests lead us to conclude that she continues to have an unresolved problem with illegal substances that would put the girls at risk if they were returned to her care. Despite the number of programs and services that have been made available to her in the past four years she has been unable to resolve the problem. There is clear and convincing evidence supporting the fact that the children cannot be returned to her care at this time.

The parents contend termination is not in the children's best interests as they are bonded with the children and the children want to come home. We agree there is bonding between the parents and a termination of parental rights will present difficulties for the children. The children also are bonded to the foster mother. The department has worked with this family for an extended period without success. Neither parent is in a position to take the children at this time. The children have a chance of being adopted by a stable parent or parents. We reject the parents' arguments on this ground.

AFFIRMED.