

IN THE COURT OF APPEALS OF IOWA

No. 0-302 / 10-0485
Filed May 12, 2010

**IN THE INTEREST OF V.K. and L.K.,
Minor Children,**

**D.M.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from an order terminating her parental rights to two
children. **AFFIRMED.**

Kara McFadden, Cedar Rapids, for appellant mother.

Henry Keyes of Keyes Law Offices, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant
County Attorney, for appellee State.

Cynthia Finley, Cedar Rapids, for minor children.

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

MANSFIELD, J.

A mother appeals from the juvenile court order terminating her parental rights to her two children.¹ She argues that the State failed to prove the statutory grounds by clear and convincing evidence and that termination was not in the children's best interests. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

D.B. is the mother of two children, V.K. (born 2002) and L.K. (born 2004). D.B.'s husband, N.K., is the father of the children. The marriage has been volatile, resulting in numerous interventions from the police and the Iowa Department of Human Services (DHS). Since the family first came to the attention of DHS in 2003, it has been the subject of at least nine child abuse assessments with five founded reports for denial of critical care due to domestic violence, lack of supervision, or the unsanitary condition of the home.

The first founded report occurred on November 15, 2005, when the Marion police responded to a domestic disturbance call. Upon their arrival, the officers found D.B. and N.K. arguing in front of the children. The family home presented health and safety concerns due to its unsanitary condition. At that time, DHS arranged to have the children temporarily placed with their paternal grandmother until the residence could be cleaned. After two weeks the children were returned. However, shortly thereafter the conditions in the home again deteriorated, and D.B. and N.K. agreed to participate in voluntary services with

¹ The juvenile court also terminated the parental rights of the children's father, but his rights are not at issue in this appeal.

DHS. During this time, N.K. was working and D.B. was primarily responsible for the care of the children.

On December 18, 2006, the Marion police were again called to the family residence for a report of domestic violence. At this time, the officers again found the family home to present a health and safety hazard and notified DHS. In the subsequent child abuse assessment, DHS noted the entire house was so cluttered it was difficult to maneuver, and the kitchen was full of trash, dirty dishes and rotting food. It was also noted that the floor had feces on it and was soaked with urine from the family's numerous (at least five) cats. When told that the children could not live in such an environment, D.B. and N.K. blamed and yelled at each other in front of DHS, the police, and their children. The children were again temporarily placed with the paternal grandmother, but were eventually returned to parental care in early January 2007.

After this incident, DHS filed a child in need of assistance (CINA) petition due to continuing concerns regarding the safety of the children. On April 27, 2007, the parties stipulated to the children being adjudicated CINA under Iowa Code sections 232.2(6)(c)(2), (g), and (n) (2007).

Following adjudication D.B. and N.K. separated, but problems continued. On May 22, 2007, D.B. was returning the children to N.K. after visitation when another argument erupted. While the parents argued, V.K. walked away from the home. V.K. was later found by the Marion police approximately four blocks from the family home standing at a busy intersection. When V.K. was returned home, DHS again noted the residence to be in an extremely cluttered and unsanitary

condition. Thus, DHS obtained a temporary removal order and placed the children into family foster care.

Upon being removed, V.K. had a psychological evaluation, where he was found to have an adjustment disorder with disturbances of mood and conduct. The evaluation concluded that V.K.'s problems were environmental in nature. In addition, both children were found to have language delays.

In June 2007, the parents decided to resume their relationship and reunify their family. Thereafter, the parents participated in mental health evaluations and attended individual and couples therapy. During this time, financial issues caused them to be evicted from their home. The parents were able to find a new residence and progress to semi-supervised visitations. However, in November 2007, visitations were returned to fully supervised following another domestic incident requiring police involvement.

The parents continued to work towards reunification, and on May 30, 2008, a trial home placement was initiated. At this time, D.B. was working two part-time jobs, while N.K. was unemployed. During the placement, concerns persisted regarding the cleanliness of the home, the parents' ability to adequately supervise the children, and the parents' unstable relationship. In addition, the children exhibited increased behavioral problems including defiance and tantrum.

On August 17, 2008, V.K. was found wandering in the median of Highway 100. The Marion police recognized V.K. from the prior incidents, contacted DHS, and took V.K. home. At the home, DHS noted the cleanliness as again being unacceptable. However, the children were not removed from the home at this time. Instead, the DHS case manager and the in-home services provider helped

the parents clean the home and provided further instruction on how to maintain the home in the necessary condition for the children to remain in their care.

On August 25, 2008, the police responded to another domestic incident. At this time, the parents continued to argue and blame each other for the condition of the home and the supervision of the children.

On October 27, 2008, the guardian ad litem came to the family home for a scheduled meeting. She arrived at the home at approximately 5:30 p.m. and was allowed into the residence by V.K. The guardian ad litem called out "hello" several times, but no one responded. Approximately twenty-five minutes later, the DHS case manager arrived. She had V.K. go get his father. When N.K. came downstairs, he claimed to have been cleaning underneath the bed and not to have heard the guardian ad litem call out. At this time, the trial home placement was ended, and the children were returned to foster care. During this incident, D.B. was at work.

On December 11, 2008, the State filed a petition for the termination of parental rights. Around this time, the parents ended their relationship. D.B. continued to reside in the family home while N.K. moved to Clinton to live with his brother. Eventually, N.K. moved to Virginia where he has remained.

In January 2009, D.B. began making some progress towards reunifying with her children. With the help of two friends telling her what to clean and organize, D.B. was able to make the home suitable for visitation. D.B. also continued to participate in individual counseling, domestic violence counseling, parenting support group, and in-home services. She further filed for a divorce from N.K., and continued to maintain her employment with the two part-time

positions. However, finances continued to be a problem for D.B. Although she received some financial assistance from her father, her gas service was turned off due to nonpayment in March 2009. The service was later restored. D.B. also fell behind on her electricity payments.

In April 2009, a hearing was held on the State's petition. At this time, the DHS case manager expressed continued concerns regarding D.B.'s ability to keep her home clean. The case manager testified that in recent weeks the home "had become somewhat cluttered." The case manager also stated that following visits with D.B., the children "are pretty out of control" and are defiant and throw tantrums as a way to get attention.

The in-home service worker also testified to the condition of D.B.'s home. He stated that since the home was cleaned in January 2009, it has "slowly regressed" to its prior condition. The worker also testified that he believed the home was a safety and health hazard. According to the worker, in March, he noticed chemicals left out within reach of the children. He also testified to a specific incident where L.K. returned from a visit with a blanket that had fresh cat urine on it. (Three cats, as well as a guinea pig and two pet rats, continue to reside in the apartment.) The worker further testified that D.B. has made improvements in her supervision of the children, but she was still "not to the level where . . . visits can be unsupervised or semi-supervised."

D.B. testified she is ready, willing, and able to resume care of her children. Specifically, D.B. believed that without N.K. as a stressor in her life, she will be able to better maintain the house and supervise the children. She also testified

that she makes approximately \$24,000 a year working her two jobs, and that she has been slowly catching up on her back payments for gas and electricity.

N.K. testified by telephone. He stated that he had no intention of reuniting with his children, but wanted to ensure that they were not placed with D.B.

On March 9, 2010, the juvenile court entered an order terminating D.B.'s parental rights pursuant to Iowa Code sections 232.116(1)(d) and (f) (2009) and N.K.'s parental rights pursuant to sections 232.116(1)(a), (d) and (f). D.B. has appealed.

II. Scope of Review.

We review termination of parental rights cases *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual determinations, but are not bound by them. *Id.*

III. Analysis.

D.B. asserts that the State failed to prove the statutory grounds for termination by clear and convincing evidence. "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one section cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find termination to be proper under section 232.116(1)(f).

Section 232.116(1)(f) authorizes termination of parental rights when:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

D.B. does not challenge that the first three elements under this section were established. Rather, she contends the State failed to prove by clear and convincing evidence that the children could not be returned to her care at the time of the termination hearing without remaining CINA. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Under this element, “[t]he threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child’s removal from the home.” *Id.* If any of the definitional grounds of CINA are met, such that the children cannot presently be returned to the parent’s custody, that is a sufficient basis for termination. *Id.* at 815. The record in this matter supports a finding that the children could not be returned to D.B.’s care without being subjected to a lack of adequate shelter. See Iowa Code § 232.2(6)(g).

Throughout this case, the family home has repeatedly been found in a cluttered and unsanitary condition that presented a health and safety hazard for the children. The home has been cleaned with outside help on several occasions, only to regress back to its original condition. Most recently, the home was cleaned in January 2009 with outside help, but since that time, both the case manager and in-home worker have witnessed a steady decline in the home’s cleanliness. For example, L.K. was found with a blanket in her possession that contained cat urine. Apparently, D.B. does not recognize, nor is she able to

address, the unsanitary and dangerous condition of her home without outside assistance.² In short, we agree with the observations of the DHS case manager:

[D.B.] continues to need assistance from the Department and consistent urging and support as far as keeping her home clean, keeping utilities paid, ongoing parenting regarding the children and properly supervising the children. I feel that if [the children] were to be returned home, I think that the Department would have to continue to be involved, or if we were not involved, we would start getting calls again regarding the family.

The concerns go beyond D.B.'s housekeeping. We believe there is clear and convincing evidence that D.B.'s parenting skills have not progressed to allow her to properly supervise V.K. and L.K. See *id.* § 232.2(6)(c)(2). Despite extensive parenting services having been provided in recent years, D.B. continues to be "easily distracted" and the children during visits "do not listen to her redirections or prompting." Given V.K.'s propensity to run away and the behavioral issues posed by both children, this means they would be at risk if returned to D.B. Therefore, we conclude that termination was proper under section 232.116(1)(f).

D.B. also challenges whether termination was in the children's best interests. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). In considering a child's best interests, "the court gives primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the

² D.B.'s testimony as to why she allowed her house to become unsanitary was revealing:

I was finding it really difficult to stay focused in this big, empty, quiet house with just me. I would go home and do—and work on some cleaning, and then I would want to go over to a friend's house to hang out for the rest of the night and then go home and go to bed.

We believe that the State has a valid point: If D.B. for whatever reason cannot keep the house in sanitary condition when she is *not* caring for V.K. and L.K., it is difficult to see how she would be able to do so while bearing the added burden of caring for the children.

child, and to the physical, mental, and emotional condition and needs of the child.” *Id.* (quoting Iowa Code § 232.116(2)).

The inability to maintain a sanitary home without outside assistance clearly shows that D.B. is unable to provide the children with a safe environment. *See id.* at 41. Moreover, these children have some developmental delays and badly need stability and permanency. In addition, the children have significant behavioral issues that appear to be related to the challenging environment in which they were raised. Both of them have been defiant and aggressive; V.K. has run away on more than one occasion; and V.K. also killed the family’s pet guinea pig when he did not get his way. According to outside observers, the behavioral issues have tended to increase following visits with D.B. Applying the factors of section 232.116(2), we conclude termination of D.B.’s parental rights to V.K. and L.K. is proper.

Lastly, while there is no doubt a strong bond exists between V.K. and L.K. and their mother, making this in some ways an unfortunate case, D.B. does not argue that section 232.116(3)(c) should foreclose termination of parental rights in this case. Even if D.B. did so argue, we would find that this consideration is outweighed by the evidence in this case demonstrating that D.B., despite good intentions and sincere love for her children, is unable to maintain a safe and sanitary home for them or give them the supervision and direction they need.

Accordingly, we affirm the order of the juvenile court terminating the mother’s parental rights.

AFFIRMED.

Eisenhauer, J., concurs; Sackett, C.J., concurs specially without opinion.