

IN THE COURT OF APPEALS OF IOWA

No. 0-447 / 10-0656
Filed July 14, 2010

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

**D.S.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

A mother appeals the juvenile court's order terminating her parental rights
to three of her seven children. **AFFIRMED.**

Elizabeth M. Biver of Papenheim Law Office, Parkersburg, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Greg Lievens, County Attorney, and Martin Petersen, Assistant County
Attorney, for appellee.

Michael Bandy, Waterloo, for father.

Amy K. Swanson of Lawler & Swanson, P.L.C., Parkersburg, guardian ad
litem and attorney for minor children.

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

TABOR, J.

D.H. appeals the juvenile court's order terminating her parental rights to three of her seven children:¹ four-year-old An.H., three-year-old Al.H., and two-year-old C.H. The district court's order also terminated the parental rights of the children's father, B.H., but he does not appeal. The mother asserts that the juvenile court erred in finding clear and convincing evidence that the children could not be returned to her care. She also contends there is clear and convincing evidence that termination would be detrimental to the children because of their bond with her. We affirm.

I. Background Facts and Proceedings.

The Iowa Department of Human Services (DHS) first alleged An.H. was a child in need of assistance (CINA) in April 2006 when he was less than one year old. The petition alleged ongoing domestic violence perpetrated by the child's father against the child's mother. The DHS also had concerns about the sanitary conditions at the family's property. The family's stress increased after the birth of Al.H. in August 2006. The juvenile court adjudicated An.H. to be a CINA on November 15, 2006, but left placement with his parents. His sister, C.H., was born in May 2007. In October 2007, B.H. violated the conditions of his probation on his conviction for domestic abuse assault and was incarcerated.

¹ D.H. has three children—ages fourteen, twelve, and eight—from her first marriage. These older children were previously adjudicated in need of assistance, but are not involved in this termination action. D.H. also gave birth to a daughter while the termination petition was pending. The court ordered that child removed from her mother's care on April 5, 2010.

The DHS removed all three children from their mother's care on October 22, 2007, and placed them in foster care. Removal was precipitated by then two-year-old An.H. falling into a neighborhood pond and being pulled out by his six-year-old half-sister. D.H. had allowed the youngsters to wander outside without adult supervision for more than an hour. On October 31, 2007, the juvenile court adjudicated the younger siblings, Al.H. and C.H., to be CINA and ordered all three children to remain in family foster care.

After a successful trial-home placement in February 2008, the juvenile court returned the children to the care of their mother on March 5, 2008. The DHS case worker testified that D.H. focused on her children and performed her best parenting during the time B.H. was incarcerated. B.H. returned to the family home on March 29, 2008. On July 21, 2008, B.H. assaulted D.H. causing injuries. All six of D.H.'s children were in the home at the time of the domestic violence. Authorities arrested and jailed B.H. for the assault.

Less than three weeks after B.H. left the home, D.H. started an intimate relationship with a man named Shane who was previously investigated for sexual misconduct with a child. As soon as the DHS learned that Shane was spending time in the home, case workers required D.H. to sign a safety plan prohibiting contact between Shane and her children. Despite telling the juvenile court at a review hearing that she ended her relationship with Shane, D.H. continued to expose her children to this new paramour, knowing he had a founded report of child sexual abuse. The DHS asked police to do a welfare check in January 2009. Seeing the police at the door, D.H. reacted: "Shane, we're busted." On

January 7, 2009, the juvenile court ordered removal of the children from their mother's care. The court continued placement outside the home following a May 13, 2009 review hearing. On July 9, 2009, police arrested Shane in D.H.'s bedroom for failure to appear on a public intoxication charge; Shane was intoxicated at the time of the arrest.

After Shane went to jail, D.H. reinitiated an intimate relationship with B.H., who was released from custody on July 15, 2009. The couple's divorce was final on August 24, 2009 and the no-contact order was lifted on August 27, 2009. By September, D.H. advised the DHS case worker that she was expecting another child with B.H. as the father. During the fall of 2009, B.H. stopped participating in family team meetings with the DHS. D.H. expressed to her case worker she was growing frustrated with the relationship and relayed an incident in which B.H. threw groceries when he was upset with her. Nevertheless, when their fourth child was born prematurely on February 20, 2010, D.H. and B.H. spent time together at the hospital, even sleeping together in a single hospital-room bed.

On December 10, 2009, the State filed its termination petition. The juvenile court heard evidence regarding termination on January 28, 2010, and again on April 7, 2010. On April 13, 2010, the court terminated the mother's parental rights to An.H. pursuant to Iowa Code section 232.116(1)(f) (2009) and the two younger children under section 232.116(1)(h) (2009). The mother appeals from the terminations.

II. Scope and Standard of Review.

We review the juvenile court's decision to terminate parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650–51 (Iowa Ct. App. 2007). The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *Id.* In considering whether to terminate parental rights, our primary considerations are the children's safety; their physical, mental, and emotional condition and needs; and the placement which best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2).

III. Merits.

The juvenile court found clear and convincing evidence the children could not be returned to their mother at the time of the termination hearing. See Iowa Code § 232.116(1)(f), (h). The juvenile court summarized its reasoning as follows:

[D.H.] has been unable to stop herself from being involved with individuals who pose a significant risk of harm to her Children. The Department detailed years of services which have been offered to [D.H.]. Despite these services, she continues to choose relationships with abusive and dangerous men. She does not comprehend the danger that these individuals have posed to her Children.

The district court's ruling recognized that D.H. is not the direct source of the harm to her children, but the conduit through which they are exposed to danger. On one level, this case highlights the tension between abused mothers and the child welfare system. See Bernardine Dohrn, *Bad Mothers, Good Mothers, and the State: Children on the Margins*, 2 U. Chi. L. Sch. Roundtable 1, 8–9 (1995) (opining that “[t]he ubiquitous legal standard of ‘the best interest of

the child' . . . has been turned into a bludgeon against women even when there is no evidence of danger to a child"). D.H. was the victim of domestic violence and when her batterer, the children's father, was incarcerated in the spring of 2008, she was able to focus on her children and grew to be a more effective parent.

On another level, this case illustrates that mothers, even those who have been abused themselves, bear a responsibility not to expose their children to dangerous individuals. See Mary E. Becker, *Double Binds Facing Mothers in Abusive Families: Social Support Systems, Custody Outcomes, and Liability for Acts of Others*, 2 U. Chi. L. Sch. Roundtable 13, 21 (1995) ("No matter how weak the mother, she is in a much better position than the child to prevent abuse and owes a duty of care to her children."). Our court has recognized the "ravaging and long-term consequences of domestic abuse on children." *In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997) ("A child who grows up in a home plagued with battering can, in many significant ways, be scarred for life.").

When B.H. seriously assaulted D.H. in the summer of 2008, she did not follow the same independent parenting path that she had taken after his previous arrest. Instead, within weeks of B.H.'s incarceration, D.H. brought home Shane, a man being investigated for inappropriate sexual contact with a child. Despite knowing that the DHS returned a founded child sexual abuse report against Shane, D.H. continued to allow him to care for her children for months and lied to her case worker about the ongoing contact. The poor judgment exercised by D.H. during this time period posed a serious risk to her children and revealed that

her struggle with co-dependency on dangerous men reached beyond her “toxic” relationship with B.H.

D.H.’s reunification with B.H. after Shane’s arrest fuels the concern that she is not yet able to break out of the cycle of domestic violence. She testified that she was working at being more assertive and setting more boundaries with B.H., but acknowledged that the path to recovery “is a lifetime process. It sometimes comes fast; sometimes comes slow.” Unfortunately, juvenile courts considering termination petitions face “a number of stern realities Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). At the time of the termination hearing, the children had been in family foster care for more than one year. The county attorney argued at the hearing: “These children don’t deserve to wait any longer.”

The record shows that D.H. is a good mother in many ways. She attends all scheduled visitations with the children and has sought more time with them, she partakes in services offered by the DHS, she holds steady employment, and she does not abuse drugs or alcohol. However, she has not been able to apply the insights gained from her therapy to consistently maintain a healthy and safe home environment for her young children. She also has been less than forthcoming with DHS workers concerning her relationships with men who pose a danger to her children. We concur with the district court’s conclusions that the children cannot be safely returned to their mother’s care and their prospects for

long-term nurturing and growth are best served by terminating the mother's parental rights.

Finally, D.H. urges us to find that the exception in section 232.116(3)(c) applies in this case. The juvenile court need not terminate the parent-child relationship if there is clear and convincing evidence that the termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c); *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). The social worker assigned to this family acknowledged a bond between D.H. and her children. The evidence also showed that the bond frayed when D.H. was distracted by her relationship with Shane; when the children were removed in January of 2009 they were not engaged with their mother and their needs were not being met. Given this record, we do not find clear and convincing evidence that these children enjoy such a close relationship with their mother that termination would be to their detriment.

We find the juvenile court properly applied the requirements of Iowa Code section 232.116 and affirm its decision to terminate the mother's parental rights.

AFFIRMED.