

IN THE COURT OF APPEALS OF IOWA

No. 0-826 / 10-1518
Filed November 10, 2010

**IN THE INTEREST OF A.F., D.W., and D.W.,
Minor Children,**

B.B.W., Father of D.W. and D.W.,
Appellant,

A.E.W., Mother,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

A father and mother appeal separately from the order terminating their parental rights. **AFFIRMED.**

Joseph R. LaPointe, Mason City, for appellant father of D.W. and D.W.

Charles H. Biebesheimer, Clear Lake, for appellant mother.

Robert S. Swanson, Clear Lake, for father of A.F.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Steven D. Tynan, Assistant County Attorney, for appellee State.

Mark Young, Mason City, for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

Amber and Brandon separately appeal from a district court order terminating their parental rights under Iowa Code section 232.116(1)(f) (2009). Both challenge whether the State proved the statutory grounds by clear and convincing evidence, whether termination was in the children's best interests, and whether the closeness of the parent-child relationship should prevent termination. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Amber is the mother of a daughter, A.F. (born 2001), and two sons, D.W. (born 2003) and D.W. (born 2005). Brandon is the father of D.W. and D.W. A.F.'s father is currently incarcerated in federal prison and voluntarily consented to the termination of his parental rights.

Amber and Brandon's relationship has a significant history of domestic violence, alcohol abuse, and substance abuse. The Iowa Department of Human Services (DHS) first became involved with the family in December 2007 due to a physical altercation that occurred in front of the children while both parents were intoxicated. During the altercation, Amber sustained a black eye. A subsequent child protective assessment was confirmed, and Amber and Brandon agreed to participate in voluntary services.

On April 6, 2008, Amber was arrested for second-degree burglary, and Brandon was arrested for operating while intoxicated. Amber was eventually convicted of trespass and paid a fine, while Brandon was convicted and ordered to serve jail time in addition to a fine.

On May 9, 2008, both parents were involved in a family brawl described by the police as a “free for all.” During the fight, Brandon’s mother sustained injuries when Amber pulled on her hair and ripped out one’s of her earrings. Brandon also sustained a cut to his face when he was punched by Amber’s brother. Alcohol was a factor in the brawl. The brawl was witnessed by the children and resulted in a second founded child protective assessment. Following the incident, Amber obtained a no contact order against Brandon.¹

On June 24, 2008, Amber called the police following another incident of domestic abuse. When the officers arrived, they found Brandon passed out in bed with marijuana next to him, a pipe on his chest, and blood on his face and shirt. Brandon was arrested and charged with second offense domestic abuse assault against Amber, possession of a controlled substance, and possession of drug paraphernalia. The children were not present for this incident. Brandon was later convicted of the possession charge (the others were dropped) and was ordered to serve jail time and fined.

Due to the continued concerns of domestic violence and alcohol abuse, DHS filed a petition alleging the children to be children in need of assistance (CINA). Following a hearing on August 20, 2008, the children were adjudicated CINA under Iowa Code section 232.2(6)(c)(2).

After the hearing, Brandon participated in inpatient substance abuse treatment. However, after a week, he walked out on treatment and was unsuccessfully discharged.

¹ At some later point in time, the no contact order was vacated at Amber’s request.

On September 12, 2008, Brandon was arrested and charged with public intoxication. He was convicted and assessed a fine. At this time, Brandon was also found in violation of the no contact order for the June 24 incident. Brandon was found in contempt and sentenced to a jail term.

On September 22, 2008, Amber was arrested and charged with operating while intoxicated, first offense. Amber was convicted and sentenced to jail and fined.

On January 6, 2009, a third child protective assessment was initiated by DHS. The child protective assessment was eventually found to be unconfirmed. However, protective workers did observe Amber's face and cheek to be "very bruised." During the assessment, a DHS protective worker also overheard an angry phone call from Brandon to Amber.

On February 12, 2009, a fourth child protective assessment was initiated after reports of another alcohol-related domestic incident between Amber and Brandon. This report was confirmed. The following day, Amber was arrested for public intoxication. She was convicted and assessed a fine. On February 22, Amber was arrested again and charged with trespass. She was convicted and assessed a fine.

On February 23, 2009, following a contested review and modification hearing, the children were removed from parental care and placed into family foster care.

After the children's removal, both parents continued to engage in significant criminal and violent activity. On March 2, Brandon was charged with trespass. He was convicted and assessed a fine. On March 23, Brandon was

arrested for serious domestic assault on Amber. This charge was later dismissed. Brandon was then arrested twice for violating the no contact order. One of these arrests resulted in a finding of contempt and jail time, while the other was dropped.

On May 12, 2009, Amber and Brandon were reportedly involved in a street fight with eight to ten other people outside a bar. Amber was arrested on the scene and was charged with public intoxication and interference with official acts. Although Brandon was alleged to have been involved in the fight, he fled the scene and was never charged.

On May 25, 2009, Amber was arrested for a second offense of operating while intoxicated. This charge was later dismissed. Two days later, police were called to Brandon's residence for a domestic disturbance. Brandon and Amber were both intoxicated and had started a fight with Brandon's brother. No charges were filed for this incident. On June 1, Brandon was charged with third-degree theft. This charge was later dismissed.

On June 9, 2009, Amber and Brandon were arrested and charged with first-degree burglary and extortion. It was alleged that Amber and Brandon entered a home and beat the two residents with baseball bats. Amber later admitted to police that this incident was due to a "dope deal gone bad." Amber and Brandon were both convicted of attempted burglary in the third degree and sentenced to probation.

When Brandon and Amber were released from jail the next day, a DHS provider requested that they both participate in drug testing before beginning a scheduled visit with the children. At this time, both Amber and Brandon became

extremely confrontational with the provider and refused to submit to testing. Due to their behaviors, the provider cancelled the visit. Also, because of comments made by Brandon, the provider had to request a police escort for the children's return to the foster home and for her return home after work. After this incident, all visits occurred at the DHS office.

On September 10, 2009, a fifth child protective assessment was initiated against Amber and Brandon. At this time, the children had reported that Amber used a cooking spatula to spank them and that Brandon had thrown A.F. against the wall. This assessment was found to be confirmed. In October 2009, a DHS service provider cancelled a visit because Amber sounded intoxicated over the phone.

On October 14, 2009, a therapist for the children recommended that visitation between the children and the parents stop due to tantrums, an escalation in the children's behaviors following visits, and increased anxiety exhibited by the children. Despite the recommendation, DHS continued to provide supervised visits with the hope of reunification.

Until April 2010, both parents were uncooperative with DHS and failed to fully attend or complete services. During this time, Amber and Brandon also consistently struggled with substance abuse. Both parents missed several drug tests. In addition, Amber tested positive for methamphetamine, amphetamine, and marijuana in March 2009, and for marijuana in May 2009, November 2009, February 2010, and March 2010. Brandon also tested positive for methamphetamine, amphetamine, and marijuana in February 2010, and marijuana in March 2009.

On April 8, 2010, the State filed a petition to terminate parental rights. After the petition was filed, Amber began to make progress in her sobriety. Amber was able to provide clean drug tests consistently. She also enrolled herself in a substance abuse treatment program and successfully graduated in July 2010. Amber also consistently attended her mental health therapy sessions, and gained regular employment. Further, visits were generally appropriate and were allowed to occur at the parents' home.

Despite the improvements, on April 30, 2010, Amber and Brandon were arrested and charged with assault, trespassing, and attempted third-degree burglary. Amber and Brandon admitted to being intoxicated at the time of this incident. These charges are still pending; however, Brandon was incarcerated from May 10 to June 10 for a probation violation. Brandon and Amber married on June 14, 2010.

Termination hearings were held on August 19-20, 2010. At the hearing, Amber and Brandon admitted that within the last month, there was an incident at the house where Brandon punched or kicked holes in the walls during an argument. Brandon also admitted that he was "still struggling a little bit with [his drinking]," and that he was intoxicated as recently as the Sunday or Monday night before the termination hearing (two days prior).² Brandon also admitted that since his release from jail, he has been missing his mental health appointments because he had been "[s]pacing them off mostly."

Both Amber and Brandon recognized that they need more time before the children could be returned to their care. As Brandon stated, the children may

² Amber posted a Facebook entry: "Someone save me he's drunk again."

need to wait “[a]s long as it takes for me to prove myself, to get them back.”

Amber testified:

Q. How long are these children going to need to wait for you and Brandon to be ready to parent them. A. They shouldn’t have to wait.

Q. I know they shouldn’t have to wait. A. I shouldn’t have let my addiction take over.

Q. So you’re ready to take them back today? A. It’s not in the children’s best interests, as said by everyone. I would like to, but I know [Brandon] needs more help.

Q. And you recognize they shouldn’t have to wait. This isn’t about the parents and giving them time to get ready. It’s about the permanency of the children, right? A. Yes, I do think we should have a little more time. They should not have to wait.

Q. How long? A. Few more months. Make him still be sober and go through treatment.

On September 10, 2010, the district court filed an order terminating Amber and Brandon’s parental rights under Iowa Code section 232.116(1)(f). Amber and Brandon separately appeal.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the district court’s factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Analysis

Amber and Brandon first challenge whether the State proved by clear and convincing evidence that the children could not be returned to their custody at the time of the termination hearing. See Iowa Code § 232.116(1)(f)(4). “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).

The record reveals that Amber and Brandon have significant histories of domestic abuse, substance abuse, alcohol abuse, and criminal activity. Following the children's removal in February 2009, both parents were hostile to treatment and services, were arrested on numerous occasions, were found to be in an intoxicated state, failed drug tests, and were violent between themselves and with others. Both parents still have pending criminal charges.

Brandon has made no progress in addressing any of these concerns. In addition, although Amber has made some progress, she waited until after the filing of the termination petition. "A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting." *Id.* at 495. Despite her recent improvements, we agree with the district court that substantial concerns remain given her history of substance and alcohol abuse, her short treatment time period, her relapse in April 2010 resulting in pending criminal charges, and her marriage to Brandon who has failed to follow through with treatment in any way. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) ("Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting."). Accordingly, we find that State has proved that the children cannot be returned to the parents' custody at this time or in the reasonably foreseeable future.

Amber and Brandon also challenge whether termination was in the children's best interests. See *In re P.L.*, 778 N.W.2d 33, 37-39 (Iowa 2010). In considering a child's best interests, "the court shall 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." *Id.* at 39 (quoting Iowa Code § 232.116(2)).

The parents have been unable to provide the children with a home free from alcohol and substance abuse, putting them at clear risk. In addition, the parents' domestic violence issues have not been adequately addressed and have resulted in the children having anxiety before visits. By the time of the termination hearing, the children had been removed from the parental home for almost eighteen months. "Children simply cannot wait for responsible parenting." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together." *Id.* The children have excelled with the current foster family and are in a pre-adoptive placement. The foster mother testified that if parental rights are terminated, her family would be interested in adoption. Considering the factors of section 232.116(2), we find that termination was in the children's best interests.

Both parents also maintain that their parental rights should not be terminated due to the "closeness of the parent-child relationship." Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. While there is some degree of a bond between these children and their parents, we find it is insufficient to outweigh the

importance of providing permanency, stability, and a safe living environment for these children.

Accordingly, we affirm the order of the district court terminating the parental rights of Amber and Brandon.

AFFIRMED.