

IN THE COURT OF APPEALS OF IOWA

No. 0-865 / 10-1697
Filed December 22, 2010

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

S.P., Mother,
Appellant,

T.C.H., Father,
Appellant.

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

A mother and father separately appeal the termination of parental rights to
their children. **AFFIRMED.**

John C. Heincke of Kragnes & Associates, P.C., Des Moines, for appellant
mother.

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, John P. Sarcone, County Attorney, and Christine Gonzalez, Assistant
County Attorney, for appellee.

Michelle R. Saveraid, Des Moines, attorney and guardian ad litem for
minor children.

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

TABOR, J.

A mother and father separately appeal the termination of parental rights to their three daughters: eleven-year-old J.H., nine-year-old K.H., and six-year-old A.H. Both parents allege the State fell short of proving the statutory grounds for termination and both allege severing the parental bonds is not in the best interests of the girls. Because the factual record does not support the position of the parents, we affirm the juvenile court order terminating the parental rights of both the mother and father.

I. Background Facts and Proceedings

This family started receiving services through the Department of Human Services (DHS) in April 2008 after the father, T.H., and another man barged into the home occupied by the mother, S.P., and the three girls. One of the intruders discharged a gun. The juvenile court ordered the children removed from their parents' custody in December 2008 based on the mother's abuse of methamphetamine, her exposure of the children to other drug users, and the father's incarceration in the Polk County jail.

Both parents have a history of substance abuse dating back to their early teenage years. The mother admitted using, at various times, marijuana, LSD, cocaine, and methamphetamine. Methamphetamine has been her recent drug of choice. Despite being in and out of treatment, she has not been able to overcome her addiction to methamphetamine. The mother admitted using methamphetamine within ten days of the termination hearing. At the time of the hearing she recently had moved into House of Mercy, a transitional housing and

counseling center for women with addictions. The mother did not visit, call, or write to her daughters during the year leading up to the termination proceedings.

In addition to his own problems with substance abuse, the father has engaged in a pattern of controlling and assaultive behavior toward both S.P. and his new wife, Desiree. The father experienced some success in substance abuse treatment and regained custody of the children from November 12, 2009, through June 10, 2010. But the father relapsed by consuming alcohol on St. Patrick's Day of 2010 and struck Desiree in the face on their way home from drinking at the bars. Desiree moved out of the house and obtained a no-contact order against T.H.

Without Desiree's help, the father was unable to juggle the challenges of caring for the children, holding down a job, and dealing with his substance abuse issues. He often locked himself in the basement and provided little supervision for the girls. Despite the no-contact order, Desiree and T.H. tried to reconcile; the girls reported that Desiree's visits often turned into arguments and physical altercations with T.H. The children reported on one occasion that their father held a knife to his throat and threatened to kill himself and Desiree. On June 7, 2010, police arrested T.H.—who had a blood alcohol level of .077—for a hit-and-run collision.

On June 10, 2010, the juvenile court removed the children from their father's care and placed them with a maternal aunt, who is a licensed foster parent. The DHS worker reported that the girls are doing "wonderfully" in this placement and the foster parents have expressed a desire to adopt them.

On July 10, 2010, authorities arrested T.H. for burglary in the third degree and harassment in the first degree. He testified at the termination hearing that he faced an indeterminate five-year prison term.

On July 21, 2010, the State filed a petition seeking to terminate the parental rights of S.P. and T.H. The petition alleged that termination was proper for both parents under Iowa Code sections 232.116(1)(b), (d), (f) and (l) (2009). The petition also asserted the court should terminate the mother's rights under section 232.116(1)(e). The juvenile court heard evidence on September 23, 2010. On October 1, 2010, the court entered an order terminating the rights of both parents on all grounds alleged in the petition.

The parents have filed separate appeals from the termination order. The State defends the grounds for termination with one exception; the State acknowledges on appeal that the children were not out of the father's custody for twelve of the past eighteen months as required by section 232.116(1)(f).

II. Standard of Review

We engage in a de novo review of termination cases. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we give weight to the factual determinations of the juvenile court, we are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In any decision whether to terminate parental rights, our primary concern is the best interests of the children. *Id.* The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *Id.*

III. Analysis

A. The evidence supported termination of the father's parental rights.

The father claims he did not abandon or desert his daughters within the meaning of section 232.116(1)(b). In its October 1, 2010 termination decision, the juvenile court delivered a frank assessment of the father's conduct:

[T.H.] has not visited, spoken with, or written the children since at least his arrest in July 2010. By his actions, he has relinquished his parental responsibilities and privileges. His need to control and to attempt to force a change in Desiree's (his wife) decisions resulted in his violation of an NCO and his harassment charge/conviction. When he acted as he did, he ignored his children's needs; he failed to give them any priority. His actions have put him in the situation wherein he is facing a 5 year prison sentence, and demonstrate a lack of intent to carry out his parental responsibilities.

The court may order termination when it finds clear and convincing evidence that the children have been "abandoned or deserted." Iowa Code § 232.116(1)(b). Iowa Code section 232.2(1) defines abandonment of a child as

the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Our courts have characterized abandonment as "a giving up of parental rights and responsibilities accompanied by an intent to forego them." *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994) (citing *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977)). This characterization breaks down into a conduct element--the giving up of parental rights and responsibilities--as well as an intent element. *Id.* A parent must do more than subjectively maintain an interest in his children. *Id.*

He must stay in a position where he can affirmatively nurture them and attend to their needs. T.H. did not do that. He engaged in reckless behavior toward the public and violent and controlling behavior toward his estranged wife, all to the detriment of his relationship with his daughters. Even during his short tenure as the custodial parent, he abdicated his parental responsibilities by frequently locking himself in his basement. When the juvenile court terminates parental rights on more than one statutory ground, we may affirm under any of the sections identified by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We agree with the juvenile court that the State proved the elements of abandonment and affirm the termination of the father's parental rights on that basis.

We now turn to the father's assertion that it is not in the best interest of his daughters to terminate his parental rights. Best interests are determined by reference to section 232.116(2). *P.L.*, 778 N.W.2d at 37. We consider the children's safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. *Id.* The father quotes testimony from therapist Amy Lapham that termination of parental rights will be "devastating" for these children. But the therapist's opinion must be viewed in its entirety. Lapham went on to testify that she saw no alternative to terminating the relationship given the failure of the parents to maintain drug-free, law-abiding lifestyles. The father's track record of substance abuse and domestic violence has sabotaged his parenting efforts in the past and does not bode well for a safe and stable future for these girls. See *In re T.B.*, 604 N.W.2d

660, 662 (Iowa 2000) (noting that the best predictor of future behavior is parent's past conduct). It is in the children's best interest to move toward a permanent placement following this termination of parental rights.

The father correctly points out that termination is not mandatory if a relative has custody of the children or if there is clear and convincing evidence that termination would be detrimental to the children due to the closeness of the bond with their parent. See Iowa Code § 232.116(3). The father suggests that a permanent placement for the children should be put on hold until he is released from prison and has a chance to regain custody. We agree with the district court's assessment that "[i]t would be detrimental to the children to require them to wait any longer." Neither their placement with an aunt nor their bond with their father should stand in the way of a more certain and secure future for these girls. We affirm the juvenile court's termination of the father's parental rights.

B. The evidence supported termination of the mother's parental rights.

The mother also challenges the State's proof of abandonment under section 232.116(1)(b). She does not dispute that her conduct signaled a giving up of her parental rights and responsibilities. But she argues the State did not prove the intent element of abandonment by clear and convincing evidence. The mother's intent may be fairly inferred from her actions. See *generally State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) ("Intent is a state of mind difficult of proof by direct evidence."). It is fair to infer from the mother's year-long absence from the lives of her daughters that she did not intend to carry out the

responsibilities of parenthood. The mother testified that she loved and missed her children. We have no reason to question her sincerity. But, as noted above, parental responsibilities require more than subjectively maintaining an interest in the children. *In re D.M.*, 516 N.W.2d at 891. There must be affirmative caregiving to the extent feasible in the circumstances. *Id.* The mother made no effort to even speak to her children for more than one year. While her entry into the substance abuse program at the House of Mercy is a step in the right direction, it comes too late to salvage her parental ties to these children. The record supports the juvenile court's finding of abandonment.

Like the father, on appeal the mother asks us to reverse the termination of her parental rights based on sections 232.116(2) and 232.116(3). But the mother herself acknowledged at the termination hearing that the children "shouldn't have to wait any time for me for anything." She expressed regret for all of the time they have spent in limbo: "I'm their mother. I should have been there in the first place." The mother's sentiments were correct. Waiting any longer for their mother to conquer her drug addiction would have a negative impact on the future of these children. Termination will best ensure their safety and long-term growth. Neither placement with their aunt nor the mother's bond with the children outweigh their urgent need for permanency.

The State proved the grounds for termination in section 232.116(1); termination is in these girls' best interests as set out in section 232.116(2); and no countervailing factors arise under section 232.116(3). We affirm.

AFFIRMED.