

IN THE COURT OF APPEALS OF IOWA

No. 1-003 / 10-1926
Filed February 9, 2011

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

K.H., Mother,
Appellant,

D.D., Intervenor,
Appellant.

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

A mother and grandmother appeal the termination of the mother's parental
rights to her two children. **AFFIRMED.**

Megan R. Rosenberg of Hobson, Cady & Cady, Hampton, for appellants
mother and intervenor.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Dan Wiechmann, County Attorney, and Brent J. Symens,
Assistant County Attorney, for appellee State.

Michael J. Cross of Cross Law Firm, Hampton, for appellee father of B.H.

Alyssa A. Kenville, Fort Dodge, for appellee father of G.J.

Larry Johnson of Walters & Johnson, Iowa Falls, attorney and guardian ad
litem for minor children.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

VAITHESWARAN, P.J.

A mother and maternal grandmother appeal the termination of the mother's parental rights to her two children, born in 2002 and 2007.¹ The mother contends the record lacks factual support for the juvenile court's determination that the children cannot be returned to her custody. The grandmother, as intervenor, also challenges the factual basis for this determination. She additionally contends it was inappropriate to continue the placement of the younger child in foster care when she was available to care for the child.

I. Return of Child to Mother's Custody

The juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (h) (2009) (each section requiring proof of several elements, including proof that child could not be returned to parent's custody). As noted, both mother and grandmother challenge the factual support for these termination grounds. Our review of the record is *de novo*. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

The two children were removed from the mother's care in late 2008 based on the mother's use of methamphetamine, domestic violence in the home, and general instability. Approximately one year later, the State petitioned to terminate the mother's parental rights to these children. The juvenile court denied the petition, concluding the mother "appears to have been successful in participating in substance abuse treatment" and "maintaining a relationship with" the children.

¹ The father of G.J., the younger child, also had his parental rights terminated and does not appeal.

The State subsequently filed a second petition to terminate the mother's rights, asserting the mother "continued to resist efforts of the Department of Human Services and their attempt to assist her in having the children returned to her." Following another termination hearing, the juvenile court granted the termination petition. The court reasoned:

[The mother] has demonstrated that she is not a reliable source of information and cannot be trusted to provide important information to the Department of Human Services or the Court to determine whether these children could be safely placed in her care.

On our de novo review, we agree with the juvenile court's assessment.

After the juvenile court denied the first termination petition, the mother disclosed that she had begun a romantic relationship with a friend who had a record of alcohol-related offenses as well as a conviction for assault. When the department learned of the new relationship, employees decided the mother would have to move from largely unsupervised visits with the children to fully supervised visits.

A family consultant who worked with the mother testified that her biggest concern was the mother's "lack of participation with me and services I provide." She noted that the mother "withdrew" after the department instituted supervised visitation. She also suggested the mother was "not open" concerning her new relationship and this was a concern "due to the fact that she has a history of unhealthy relationships" and her new boyfriend had "a questionable background."

We recognize that another service provider who supervised visits testified that "[v]isits went fine." There was also evidence that the mother shared a close bond with the children. But the mother's acknowledged bond must be balanced

against her decision to move in with a person who had substance abuse issues. She made this decision around the time the juvenile court was warning her about substance abuse and unhealthy relationships. While she maintained the department was unsupportive and bent on termination rather than reunification, the record reveals that, before this new relationship came to light, the department had transitioned her to unsupervised visitation subject only to periodic drop-in visits by a service provider. Accordingly, the change in circumstances was of her own making. Based on this record, we affirm the juvenile court's termination of the mother's parental rights to these two children.

II. Grandmother as Placement Option

The grandmother contends she should have been considered a placement option for the younger child.² See Iowa Code § 232.117(3)(c). The juvenile court did not explicitly address the grandmother's request for placement but did note that the younger child was placed with "an extraordinary foster family." While the grandmother might have been equally extraordinary, the record reveals she had limited contact with the child. Specifically, she lived in California and had not seen the child until six months before the second termination hearing. On our de novo review, we conclude placement with the grandmother was not in the child's best interests.

AFFIRMED.

² The older child, B.H., was placed with his father.