

IN THE COURT OF APPEALS OF IOWA

No. 1-009 / 10-2039
Filed February 9, 2011

**IN THE INTEREST OF O.F.-N.,
Minor Child,**

**B.M.F., Mother,
Appellant,**

**S.E.N., Father,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A mother and father both challenge the termination of parental rights to
their daughter. **AFFIRMED.**

Stephen R. Smith, Ottumwa, for appellant-mother.

Ryan J. Mitchell of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa,
for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Allen Cook, County Attorney, and Seth Harrington, Assistant
County Attorney, for appellee.

Allen Anderson of Spayde, White & Anderson, Oskaloosa, attorney and
guardian ad litem for minor child.

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

TABOR, J.

A mother and father both challenge the termination of parental rights to their daughter O.F.-N, who is now twenty months old. The parents contend that they have cooperated with services, have an emotional bond with their daughter, and deserve more time to unify their family. In our de novo review of the record, we find the mother and father have not achieved enough progress in their parenting skills to ensure their daughter would be safe if placed in their care. Because the record offers no assurance additional time would make it more likely the parents could provide a stable home for the child, we affirm the juvenile court's termination order.

I. Background Facts and Proceedings

Brenda gave birth to her daughter in May 2009 at University Hospitals in Iowa City. Concerned that Brenda lacked the necessary cognitive skills to care for the newborn, hospital staff engaged the mother in testing known as the Allen Cognitive Level Screen. The hospital's occupational therapist found Brenda suffered from a cognitive impairment and recommended safety restrictions based on her level of functioning:

Patient should not be left alone to care for a child or dependent adult. If a responsible adult is present, patient may be able to do simple tasks, such as bathe, dress and feed a dependent but will require assistance to solve problems, protect dependents from hazards and manage behavioral problems.

The Department of Human Services (DHS) started an assessment of O.F.-N. as a child in need of assistance (CINA) and the family voluntarily agreed

that the baby be placed in foster care upon her release from the hospital. She has never lived with her parents.

Scott, the child's father, also scored low on IQ tests completed during a psychological evaluation for the DHS. His results met the criteria for "mental retardation." The evaluator reported that the parents' "limited intellectual skills would affect their abilities to adequately adapt to changes/new situations, which could affect [O.F.-N.'s] safety." The DHS social worker observed that the parents lacked an understanding of their daughter's needs at her various stages of development.

In addition, the father experienced anger management problems. He described himself as "hot tempered" and admitted having trouble controlling his impulse to act violently. Scott's agitated state so frightened the foster mother that she asked the DHS to move the parents' visitations with O.F.-N. from the foster home to another location. On several occasions, Scott became upset and abruptly left visitations. Scott also taunted Brenda, once telling her during a supervised visitation in September 2010 that "if you want this to turn into a fist fight, it sure will when we get home." Social workers reported that Scott threatens to leave Brenda and "because she is unable to care for herself, the prospect of him leaving frightens her tremendously, and he is aware of this."

In May 2010, Brenda told social workers that Scott kicked her in the thigh, leaving a bruise. One of the workers saw the mark left by the kick. Scott denied perpetrating the abuse, testifying: "If I kicked Brenda, where's the pictures?" He also expressed his anger on the witness stand, saying: "[S]he can sit there and

call me a prick and an SOB and all this, and that's okay." The father also testified that his anger management classes had helped "somewhat."

The DHS social worker and foster mother testified that even after parenting classes and repeated lessons from service providers, Brenda and Scott needed continual prompting during visits to engage in safe and effective care giving. The parents allowed the baby to play with dangerous items, ignored advice concerning medication for the child, failed to understand the child's nutritional needs, and failed to ensure proper hygiene during diaper changes. The DHS social worker testified that she has not observed a strong bond between the child and her parents.

On September 21, 2010, the State filed a petition seeking to terminate the parental rights of Brenda and Scott. The petition alleged that termination was proper for both parents under Iowa Code section 232.116(1)(h) (2009).¹

The juvenile court heard evidence, including both parents' testimony, on October 29, 2010. On November 30, 2010, the court entered an order terminating both parents' rights, finding clear and convincing evidence that the

¹ The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

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

Iowa Code § 232.116(1)(h).

child cannot be returned to the care of her mother and father at this time. The court summarized its findings:

The concerns at the outset of the case included the parents' inability to meet [the child's] needs, domestic discord in parents' relationship, and father's inability to control his anger. While the parents have participated in services including parenting instruction, couple's counseling and anger management, the evidence is both clear and convincing the parents are unable to consistently meet even the most basic of the child's needs for nutrition and hygiene, and have been unable to move to unsupervised visits. In addition, there are on-going concerns regarding domestic violence in the home including an incident as late as May 2010 that father continues to deny despite credible testimony from Brenda, and physical evidence that an assault occurred. While the parents ask for additional time for reunification [O.F.-N.] is a very young child and is in need of permanency now. Given the parents' lack of progress to this point there is no assurance any additional time would make it any more likely the child would be returned.

The parents have filed separate appeals from the termination order.

II. Standard of Review

In our de novo review of orders terminating parental rights, *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we give weight to the juvenile court's factual findings, but are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We will uphold a termination order if the record contains clear and convincing evidence of grounds for termination under Iowa Code section 232.116(1). *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis

First, both parents argue the State failed to offer clear and convincing evidence that grounds for termination existed under section 232.116(1)(h). We reject this argument. The record shows that O.F-N. is younger than three years of age, has been out of her parents' custody her entire life, was adjudicated as a CINA in August 2009, and cannot be returned to her parents' care at the present time. Only the last element can be contested and it was satisfied by evidence showing the parents are unable to provide a healthy and secure environment for their daughter. Despite their receipt of services, the parents continued to exhibit an inability to understand and provide for their child's basic needs.² Low mental functioning is not alone sufficient grounds for termination, but it may be considered as a contributing factor in parents' inability to provide a safe and stable home for their child. *D.W.*, 791 N.W.2d at 708.

In addition, the threat of violence in the home stands in the way of a successful placement of the child with her parents. See *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."). The juvenile court found Brenda to be credible in her testimony that she was physically assaulted by Scott. Scott's hostile denial of this battering on the witness stand causes us grave concern about his ability to provide a secure and nurturing home for his daughter. The record also indicates that Scott uses

² We find the mother's claim that the DHS did not make reasonable efforts to keep the family together was not preserved for appellate review because the record does not show that the mother demanded services that were not provided. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

threats to take advantage of Brenda's dependence on him. All in all, the parents' volatile relationship undermines the prospect of providing a healthy atmosphere for child rearing.

Second, the parents assert it is not in their daughter's best interest to terminate their parental rights. The record does not support their assertion. The social worker did not observe a particularly strong bond between the child and her natural parents even after months of visitation; the worker believed the foster mother enjoyed a closer connection with the child.

We conclude that it is not in the child's best interests to postpone termination. She is at an adoptable age. Her safety, long-term nurturing and growth, and physical, mental and emotion condition would be best served by severing the parental rights of her mother and father. See Iowa Code § 232.116(2).

[W]e cannot deprive a child of permanency after the State has proved a ground for termination under 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.

P.L., 778 N.W.2d at 41.

Finally, the parents do not point to any countervailing factors under section 232.116(3) that would permit the court to avoid termination. We affirm the termination of both parents' rights to their daughter.

AFFIRMED.