

IN THE COURT OF APPEALS OF IOWA

No. 1-481 / 11-0711

Filed June 29, 2011

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

C.N., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Jared C. Harmon of Carr & Wright P.L.C., Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie E. Brown
and Andrea Vitzthum, Assistant County Attorneys, for appellee State.

Nancy A. Trotter, Des Moines, for appellee father.

M. Kathryn Miller of Juvenile Public Defender Office, Des Moines, attorney
for minor children.

Erin E. Mayfield of Youth Law Center, Des Moines, guardian ad litem for
minor children.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings.**

This family came to the attention of the Iowa Department of Human Services (DHS) in the spring of 2008. Catherine, the mother of both children involved in this case, signed a consent to removal order on May 23, 2008, though the children had been in the care of their maternal grandparents since April 28, 2008 as part of a safety plan. The children have remained in their grandparents' home throughout the pendency of these proceedings and were adjudicated to be in need of assistance in July 2008.

Following a review hearing on January 15, 2009, the juvenile court found the children could be returned to their mother's custody without further adjudicatory harm so long as she continued to comply with the case plan, which included her residency at House of Mercy. Before this transition could be accomplished, Catherine was discharged from House of Mercy for noncompliance. Therefore, the children were not returned to her custody and remained in the custody of their maternal grandparents.

After a permanency hearing on May 15, 2009, the court ordered a long-term transfer of the children to the custody and guardianship of their maternal grandparents. The court, however, found compelling reasons not to terminate Catherine's parental rights at that time.

At a permanency review hearing on November 5, 2009, the court found compelling reasons to maintain Catherine's parental rights in spite of her renewed relationship with a known sex offender. The court found the children's age, bond with Catherine, and desire to maintain a relationship with her justified

maintaining Catherine's parental rights. Again in September 2010, the court found it was not in the children's best interests to eliminate contact with their mother.

After a permanency review hearing on March 1, 2011, the court found there had been a change of circumstances prompting DHS to request a petition to terminate Catherine's parental rights. The court noted DHS could no longer document compelling reasons to maintain the parent/child relationship.

The State filed a petition to terminate Catherine's parental rights on March 7, 2011. After a hearing on the matter, the district court terminated Catherine's parental rights on April 29, 2011. Catherine appeals.

II. Termination.

Catherine argues on appeal termination of her parental rights was not in the children's best interests given her bond with the children and their placement with relatives.¹ After a de novo review, we affirm. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Iowa Code section 232.116(3) (2011) provides termination is not required when a relative has legal custody of the child or when there is "clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." The factors set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

¹ Catherine does not dispute that statutory grounds existed to terminate her parental rights.

The record reveals the children are in need of permanency, which has not been accomplished through the court's prior orders. Catherine is not supportive of the children's permanent home with the maternal grandparents and continues to give the children false hope that they may return to her care. Both the DHS caseworker assigned to this case, Leslie Bechen, and a Family Safety, Risk and Permanency worker reported that Catherine was not supportive of permanency with the maternal grandparents. Further, Catherine continues to tell the children that they may be returned to her care. Because of this, the children's therapist testified the court's permanency order did not provide a true sense of permanency for the children. Bechen agreed, reporting, "The children are unable to move forward with their lives because they have the constant thought in the back of their heads that someday they may go live with their mother."

The record shows the children have repeatedly stated they are tired of the involvement of the courts and DHS in their lives. Maintaining Catherine's parental rights grants Catherine the continued ability to interfere with the permanent arrangement established with the maternal grandparents. As Bechen reported, "The children need permanency so there is no doubt in their minds where they will grow up." See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). Further, Catherine has not provided financial support for the children for over three years. We conclude a termination of parental rights is in the best interests of the children as it provides a much-needed sense of permanency for the children and allows the grandparents to receive financial stipends that would not

otherwise be available to them, allowing them to better provide for the children financially.

We acknowledge the children have a bond with Catherine and want to maintain a relationship with her. The grandparents have shown a willingness and desire to maintain the children's relationship with their mother as long as she is able to present herself in a healthy manner in front of the children. We find this arrangement is in the children's best interests. We affirm the termination of Catherine's parental rights.

AFFIRMED.