

IN THE COURT OF APPEALS OF IOWA

No. 1-955 / 11-1796
Filed January 19, 2012

**IN THE INTEREST OF V.A.W.D.H.,
Minor Child,**

**V.K.H., Mother,
Appellant.**

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

A mother appeals the district court's ruling terminating her parental rights.

AFFIRMED.

Nancy A.S. Trotter, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, John P. Sarcone, County Attorney, and Kevin Brownell and Andrea
Vitzthum, Assistant County Attorneys, for appellee State.

Charles S. Fuson of Youth Law Center, attorney and guardian ad litem for
minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

V.K.H. appeals from the district court's order terminating her parental rights to her daughter, V.H., born 2007. On October 18, 2011, the district court ordered termination of V.K.H.'s parental rights under Iowa Code section 232.116(1)(d) (adjudicated CINA for neglect, circumstances continue despite services) and (l) (adjudicated CINA, parent has a severe, chronic substance abuse problem and presents danger to self and others, child cannot be returned to parent's custody within a reasonable period of time) (2011).¹ We affirm.

I. Background Facts and Proceedings

The Iowa Department of Human Services (DHS) became involved with this family for a second time in July 2010, after V.K.H. was charged with possession of a controlled substance with intent to deliver in June 2010. V.H. was removed from her mother's custody, and was adjudicated a child in need of assistance (CINA) on August 11, 2010. V.H. was initially placed with her maternal great aunt. Shortly thereafter, the great aunt disclosed to DHS that she was using morphine without a valid prescription to treat back pain. On September 3, 2010, V.H. was placed in DHS custody and placed in a pre-adoptive foster home. On October 14, 2010, V.H. was placed in the custody of step-family members. Before a February 8, 2011 review hearing, that family

¹ The parental rights of the child's putative fathers were also terminated on October 18, 2011, under Iowa Code section 232.116(1)(b) (child abandoned or deserted), (d) (adjudicated CINA for neglect, circumstances continue despite services), (e) (adjudicated CINA, removed from parent's custody for at least six consecutive months, parent has not maintained "significant and meaningful contact" with child during previous six consecutive months and no reasonable efforts to resume care of child), and (f) (child four years or older, adjudicated CINA, removed from physical custody of parent at least twelve of last eighteen months or at least twelve consecutive months with trial period less than thirty days, clear and convincing evidence child cannot be returned to parent's custody). None of the putative fathers appeal.

informed DHS they were no longer willing to care for V.H. following the February 8 hearing. Custody of V.H. was then returned to V.K.H., who was residing at House of Mercy, a residential treatment facility. Custody would remain under DHS supervision, so long as V.K.H. complied with programming at House of Mercy. In late May or June 2011, V.K.H. tested positive for synthetic marijuana and alcohol while at House of Mercy; her attitude and willingness to comply with services at House of Mercy declined. The State moved for modification, and the district court ordered a hearing for July 19, 2011.

At the July 19 hearing, V.K.H. failed to bring V.H. to the courthouse as requested. V.K.H. reluctantly testified that on July 13, 2011, V.H. was transported to and left with V.K.H.'s aunt who resides in Chicago, Illinois. V.K.H. would not disclose any details, and it was also discovered that V.H. had been away from V.K.H. and House of Mercy on weekends with another relative, without DHS approval. V.K.H. was discharged from House of Mercy, as the facility was unwilling to provide additional services due to V.K.H.'s poor attitude and lack of accountability. The court ordered temporary legal custody of V.H. with DHS and she was placed with the foster family who had previously cared for her, where she has remained. The termination of parental rights hearing was held on October 6, 2011, with written order filed October 18, 2011. V.K.H. appeals.

II. Standard of Review

We review termination of parental rights cases de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where

parental rights are terminated on more than one statutory ground, we only need to find grounds under one section to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

III. Grounds for Termination

V.K.H. alleges the district court erred in finding clear and convincing evidence supported termination under Iowa Code section 232.116(1)(d) and (f). She specifically contends the district court erred in finding the circumstances leading to adjudication continued to exist despite the provision of services.

V.K.H.'s past and present involvement with DHS stems from her use and possession of drugs and associated criminal charges, and it is upon such grounds that V.H., only four years of age, has been removed from her mother's care and custody on three occasions. V.K.H. was first involved with DHS from May 2009 to April 2010, after she was arrested on felony drug charges. The case was closed when V.K.H. successfully complied with court-ordered services and regained custody of V.H. However, within two months of V.H.'s return, V.K.H. was charged with possession of a controlled substance with intent to deliver. In July 2010, V.K.H. consented to V.H.'s removal as V.K.H. was in jail for violating the terms of her probation.

In November 2010, V.K.H. moved from the Polk County jail to House of Mercy. When she was first at this facility, V.K.H. was attending all of her programming and group therapy sessions. She eventually finished her required parenting classes and substance abuse treatment, and was seeing a counselor once a week and working full time. However, toward the end of her stay at House of Mercy and after almost eleven months of alleged sobriety, V.K.H.

tested positive for synthetic marijuana and alcohol. V.K.H. submitted another positive urinalysis test before she was returned to jail in August 2011 for violating the terms of her parole.

At the termination hearing, V.K.H. testified as to seeking additional services. V.K.H. stated that while at House of Mercy, she did not have a counselor she could go to if she needed additional mental health services during the case. While she recalled having discussed additional services with a provider at the facility, she then contradicted her earlier testimony by stating, "I got everything that I needed out of the House of Mercy that they could provide for me." V.K.H. further testified she never asked her DHS case worker, Jessica O'Brien, nor her attorney or the judge, for additional help in obtaining mental health services. O'Brien confirmed that V.K.H. never requested additional help or services for her mental health issues.

We agree with the district court that V.K.H. was offered and received services to correct the substance abuse issues that led to V.H.'s removal. V.K.H. was placed in a residential treatment facility, where she attended and received services to address the issues that led to V.H.'s adjudication, including V.K.H.'s substance abuse issues. At the termination hearing, V.K.H. acknowledged that she was well schooled in coping skills, but chose not to utilize them at certain times. Moreover, O'Brien expressed concerns about V.K.H., testifying:

We've returned V.H. to [V.K.H.'s] custody twice to have her relapse and engage in criminal activity again. I have a lot of concerns with the disruptions to V.H., V.H.'s mental stability at this point, the trauma that she's caused her. Even—I guess my biggest concern is even in a placement like House of Mercy she couldn't abstain from using.

On our de novo review, we find that clear and convincing evidence that despite the provision of services to V.K.H., the circumstances that led to V.H.'s removal continue to exist. We recognize that V.H. cannot be returned to V.K.H. only to be subsequently removed when V.K.H. chooses to resort to drug use again. We therefore find grounds for termination exist under Iowa Code section 232.116(1)(d).

IV. Best Interests

As we have determined that grounds for termination exist, we now consider the factors under Iowa Code section 232.116(2), which requires us to “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.” Iowa Code § 232.116(2); *see also P.L.*, 778 N.W.2d at 40 (discussing the three-step analysis utilized in termination of parental rights cases).

Our primary considerations in assessing the best interests of the child are the child’s safety and the need for a permanent home. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Since May 2009, V.H.’s understanding of the term “home” has been disrupted by changes in her mother’s condition, as well as changes in relatives’ abilities or desires to care for her. For the last two years, V.H. has not known a stable, consistent home. In addition, V.H.’s placement with her mother, who continues to minimize the effect her drug use has on her ability to care for V.H., is not in V.H.’s best interests because such placement would, as has been demonstrated in the past, undoubtedly compromise V.H.’s ability to live in a safe environment. *See In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990) (“In

deciding what is best for the child we look to the child's long-range as well as immediate interests. So we necessarily consider what the future holds for the child if returned to the parent. In making this decision we look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future.”).

Our supreme court has recognized that “[c]hildren simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (quoting *L.L.*, 459 N.W.2d at 495). Because of V.K.H.’s substance abuse, criminal activity and resulting instability, V.H.’s young life has been filled with disruption. V.H. deserves permanency in her life, which her mother has failed to provide for her. We therefore find termination of V.K.H.’s parental rights in V.H.’s best interests.

V. Possible Reasons to Not Terminate

V.K.H. finally argues the trial court erred in terminating her parental rights because it failed to consider whether any of the reasons to not terminate, listed in Iowa Code section 232.116(3), applied. She specifically argues the close bond between herself and V.H. should preclude termination. Iowa Code § 232.116(3)(c). In its order, the district court held, “There are no compelling reasons to maintain the parent/child relationship nor exceptions which militate against termination.”

As the district court observed, in the past V.H. and V.K.H. have enjoyed a close bond; however, that bond has been disrupted by the many poor choices V.K.H. has made in her life, which has subjected V.H. to a roller-coaster series of

placements. “[O]ur consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [V.K.H.’s] inability to provide for [V.H.’s] needs.” *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). Central to this analysis is always the best interests of the child. *J.E.*, 723 N.W.2d at 798 (majority).

On our de novo review, we agree with the district court that termination of V.K.H.’s parental rights is in V.H.’s best interests because V.H.’s safety, as well as her need for permanency, will be best served by termination, in spite of any bond once enjoyed between V.H. and V.K.H. The mother has been unable to remain sober and free from criminal activity, and as a result has had V.H. removed from her custody three times. Such behavior does not provide clear and convincing evidence of a strong bond or relationship between V.K.H. and V.H. that can overcome any disadvantages of termination. V.H. needs permanency now, and cannot wait for responsible parenting. *Id.* at 800. We affirm.

AFFIRMED.