

IN THE COURT OF APPEALS OF IOWA

No. 2-213 / 12-0132
Filed March 14, 2012

**IN THE INTEREST OF D.V. and R.V.,
Minor Children,**

S.V., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,
District Associate Judge.

A mother appeals the termination of her parental rights to her two children.

AFFIRMED.

Jami J. Hagemeyer of Williams & Hagemeyer, P.L.C., Des Moines, for
appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant
County Attorney, for appellee State.

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

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

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

POTTERFIELD, J.

A mother appeals the termination of her parental rights to her two children, R.V., age thirteen, and D.V., age six. Because grounds for termination exist, and the mother has completely failed to address serious issues of substance abuse, mental health, and domestic abuse, we agree with the juvenile court that termination is in the children's best interests.

These children came to the attention of the Iowa Department of Human Services (DHS) in May 2010 upon a report of illegal drug use by the mother, Stacy, and Robert, the father of D.V.¹ During the child protective assessment, the mother admitted to the use of methamphetamine, but denied other drug use. However, a hair stat test was positive for cocaine. Robert admitted he and the mother had used methamphetamine or cocaine on more than ten occasions in the past six months. Robert purportedly was not living with the mother at the time of the assessment. Because Robert stated he had no intention of stopping his drug use, an order was entered in the resulting child-in-need-of-assistance (CINA) proceedings that required all visits by Robert with the children be professionally supervised.

A CINA adjudication hearing was held on July 19, 2010. Stacy and children were then residing in Robert's sister's home. Stacy told the court that Robert had not been in the home without supervision. This statement was contrary to indications that led in-home workers to conclude that Stacy had allowed Robert to have unsupervised contact with the children. The court ordered the children to continue in Stacy's care so long as she continued to

¹ Robert's parental rights have also been terminated. He does not appeal.

participate in drug treatment; family safety, risk, and prevention (FSRP) services; and individual counseling, and maintain appropriate boundaries with Robert.

On August 23, 2010, an uncontested dispositional hearing took place.² Stacy appeared to be making progress addressing her substance abuse issues as she entered an exhibit showing she had completed an out-patient drug treatment. A FSRP worker raised concerns of domestic violence between Robert and Stacy.

In September, Stacy sent a text message to Monica Holt, her DHS social worker, stating she had attempted suicide by overdosing on prescription drugs. The children were removed from the mother's care and placed with a foster family. They remained in foster care until June 2011, and then were placed with a maternal aunt and uncle in Colorado.

In October 2010, Stacy entered the House of Mercy, a residential substance abuse treatment program. On October 5, 2010, a modification of disposition hearing was held at which all parties recommended the children be placed with Stacy, so long as she resided at the House of Mercy. Stacy joined in a request that a no-contact order be issued prohibiting Robert from contacting her or the children. The court issued the no-contact order but denied the request that the children return to their mother's care, finding both parents had disregarded prior court orders designed to protect the children, and noting the parents conceded their prior reports of living separately were a "sham."

² Robert filed a consent to terminate his parental rights and stated he no longer wished to participate in services or be present at future hearings. However, he withdrew his consent a few days later.

Stacy stayed at the residential program until November 22, when she left against the recommendations of staff. R.V.'s therapist raised concerns about the mother's inability to set appropriate boundaries and the therapist recommended visits be fully supervised. Stacy told providers she did not need the services of the House of Mercy, called Robert to pick her up, and moved back to Robert's sister's home.

In January 2011, Stacy appeared to be under the influence of drugs at a visit with children. She was asked to submit to a drug screening, but she did not comply. She moved from the sister's home to a shelter, and then to a man's home where she later conceded there had been drug use and dealing. After she left that man's home, she moved in with a friend of her then-boyfriend, another person she knew only slightly. By June 2011, Stacy was again living with Robert's sister.

Throughout this process, Stacy did regularly attend supervised visits with her children. Though Stacy was meeting with her FRSP worker and visiting with the children, she was not participating in mental health therapy or drug testing, assessment, or treatment.³ Her daughter, R.V., demonstrated "parentified" characteristics, taking responsibility for her mother's well-being and behaviors.

On June 7, 2011, a permanency hearing was held and the children's disposition was modified. Stacy was not participating in drug treatment or mental health treatment, although she was attending supervised visits. The children were transitioned from foster care in Iowa to a relative placement in Colorado.

³ Stacy was telling R.V. that she was doing what was required to get the children returned to her.

The maternal aunt and uncle have cared for them since and have expressed a desire to adopt. The children are doing well in that placement.

A petition to terminate parental rights was filed on June 27, 2011, and the termination hearing was held on August 24 and 29, 2011.

Gwen Babberl, who is now a mental health therapist for Children and Families of Iowa, but was an in-home worker for LifeWorks—this family's FSRP provider testified she worked with this family from June 2010 to June 2011. She testified Stacy had not adequately addressed issues of her mental health, substance abuse, or domestic violence, and thus protective concerns remained.

Molly McMahon, therapist at LifeWorks, began working with R.V. in October 2010. She stated R.V. struggled with the transition to foster care and took on the role of parent in her relationship with her mother. McMahon had recommended only supervised visits with children because Stacy was engaging R.V. in conversations that were not age-appropriate. McMahon stated R.V. had an "unhealthy loyalty" to her mother, but by July 2011 her relationship with Stacy was becoming healthier; R.V. was recognizing her mother's limitations.

McMahon also met separately with Stacy in the fall of 2010, hoping to have her acknowledge her role in R.V.'s issues. "Stacy struggled taking on responsibility for her choices and how it led to the removal and what had happened in the past even prior to removal." When asked if she believed it would be safe and appropriate for R.V. to be returned to her mother's care, McMahon stated, "I believe [R.V.] needs stability and emotional support, and she was not receiving that in her mother's home."

Jessica Pilling, a play therapist with LifeWorks, testified she met with D.V. beginning in December 2010 and ending when the children moved to Colorado. She stated D.V. eventually expressed witnessing Robert hitting Stacy and dragging her down the stairs. She stated he was able to express sadness about the issues he had been presented with at home; he was now doing well; and he looked forward to meeting his family in Colorado. Pilling stated, "He hasn't talked about wanting to be with his mom for quite some time, simply because I think he understands that this is just how it's going to be, that he's not going to be living with her."

Stacy testified she was living with Robert's sister, Betty, but did not intend to remain there. She acknowledged she maintained a relationship with Robert, though it was not an intimate relationship. Stacy stated she was "working on getting appropriate boundaries" with Robert. She acknowledged she had not complied with drug testing, but claimed she had not used illegal substances since May 2010. Stacy testified she had been prescribed medications in January and February 2011, which left her unable to function—"I couldn't get up." She stated she was no longer on any medications prescribed for depression; though she stopped the medications "on her own" and she had not gone back to her treatment provider. Stacy acknowledged she had done nothing to comply with the court's expectations regarding unification. She testified:

I think I'm in a position to have [the children] placed in my custody today, and I think it would be in their best interests to remain [with aunt and uncle] until I got my life a little more on track.

Monica Holt testified she had been the case manager for this family since May 2010. She stated the children were doing well in their placement with the

aunt and uncle. She recommended termination of parental rights to allow the children to be adopted and have permanency.

The juvenile court did terminate Stacy's parental rights pursuant to Iowa Code section 232.116(1)(d) (2011).⁴ The court wrote in part:

Mother had regularly attended her visits with her children but has failed to comply with any other service in the past eight months. Although Mother testified she does not believe she still needs medication to address her mental health issues, she cried throughout the hearing, most notably while Father was testifying he wished they could be together. Mother clearly lacks insight as to how her behaviors affect the children and when she is redirected, she simply chooses to shut down rather than address the issue. . . .

. . . .

Throughout this case the parents have been offered extensive services to correct the circumstances that caused removal. Those services included: drug screens (both UAs and hair stats); child protective assessment services; relative placement; foster care; individual therapy for both parents; individual therapy for both children; visitation; [FSRP] services; family team meetings; substance abuse evaluations; substance abuse treatment at Broadlawns for Father; substance abuse treatment at House of Mercy for Mother; Family Violence Shelter; bus tokens for Mother; remedial services for the children; medication management for Mother; protective daycare; no-contact orders; criminal investigations; and ICPC. Despite those extensive services offered, neither parent has remedied the issues that brought these children to the Court's attention.

. . . .

. . . Mother stopped participating in substance abuse treatment when she was unsuccessfully discharged from the House of Mercy in November 2010. . . . At the time of termination it was

⁴ Pursuant to Iowa Code section 232.116(1)(d), the court may terminate parental rights if:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

evident [the mother] still had not adequately addressed her mental health issues. Mother testified she did not believe she was in need of medication to manage her depression, even though her demeanor during the hearing clearly showed continued signs of depression. Further, she had not attended individual therapy as recommended since February 2011, despite recommendation by her provider to continue with this service. Finally, neither parent has addressed domestic violence issues. The parents both have acknowledged domestic violence in their relationship, but despite that they have maintained contact throughout this case, including living together despite court orders strictly prohibiting it.

The juvenile court also concluded termination was in the children's best interests, noting the parents' lack of participation in services showed an unwillingness to make the necessary changes. The court rejected Stacy's contention that termination was not necessary because the children were in a relative's care, stating:

If a guardianship was put in place, it would only serve to leave the door open for Mother to make future attempts to make promises she cannot keep to these children, have the children remain unsure of their future, and continue to struggle with conflicting loyalty between current custodians and Mother."

Stacy now appeals. She asserts the juvenile court erred in finding sufficient evidence to terminate her rights pursuant to Iowa Code section 232.116(1)(d); in determining termination was in the children's best interests; and in terminating her parental rights despite the children's placement with a relative, and the strong bond between mother and children. In the alternative, Stacy argues the court should have deferred permanency for six months rather than terminate her parental rights.

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children at issue were removed from the mother's care after it was determined the parents had used drugs in their presence and the mother allowed the father to reside in the home and continue to use drugs despite a no-contact order. The record shows that during the pendency of these proceedings, Stacy failed to demonstrate an understanding of the effect of her substance abuse and domestic abuse on the children; failed to obtain needed mental health treatment; had illegal substances in the home; associated with unsafe individuals; and continued a relationship that involved domestic violence. Care providers noted that although it was clear Stacy loved the children, she was unable or unwilling to make decisions appropriate to meet the children's needs. There is clear and convincing evidence establishing that grounds for termination of Stacy's parental rights exist under section 232.116(1)(d).

Moreover, the court properly concluded a deferral of permanency was not in the children's best interests. See Iowa Code § 232.116(2); *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) (stating we do not gamble with children's futures by asking them to continuously wait for a stable biological parent). Stacy has failed to address issues of mental health, domestic violence, and substance abuse, for which services were recommended and offered. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable."). There is no indication in the record that Stacy would have been able to properly parent the children in six months.

We must also decide if any factors weigh against termination. See Iowa Code § 232.116(3). Like the juvenile court, we do not find the children's

placement with relatives weighs against termination. *Id.* § 232.116(3)(a). These children need and deserve permanency. See *In re C.B.*, 611 N.W.2d 489, 494–95 (Iowa 2000) (noting statutory time frame exists to prevent children from being in limbo indefinitely and to “see that some type of permanent situation is provided for children.” (quoting *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993)). Guardianships are subject to re-litigation and would not afford the children the stability and permanency they deserve. “[W]hen a parent is incapable of changing to allow the child to return home, termination is necessary.” *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

We find the closeness of the parent-child bond does not weigh against termination when, as here, that bond is unhealthy. See Iowa Code § 232.116(3)(c) (stating the court need not terminate the relationship if “[t]here is clear and convincing evidence that the termination *would be detrimental to the child* due to the closeness of the parent-child relationship” (emphasis added)).

We affirm the termination of the mother’s parental rights.

AFFIRMED.