

**IN THE COURT OF APPEALS OF IOWA**

No. 8-633 / 08-0985  
Filed August 27, 2008

**IN THE INTEREST OF E.N., E.N., and E.N.,  
Minor Children,**

**S.N., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
District Associate Judge.

A mother appeals from a juvenile court order terminating her parental  
rights to three children. **AFFIRMED.**

Martha L. Cox, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Gerda C. Lane,  
Assistant County Attorney, for appellee.

Lauren Phelps, Bettendorf, for father.

Angela Reyes, Davenport, guardian ad litem for minor children.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**SACKETT, C.J.**

Sara, the mother of sons born in September of 2004 and February of 2007, and a daughter born in July of 2005, appeals from a May 28, 2008 order terminating her parental rights to the three children.<sup>1</sup> She contends her parental rights should not be terminated because (1) her mother can take custody of the two oldest children and the third child is in her sister's custody, (2) termination would be detrimental to the children and is not in the children's best interests. The State contends error on these issues was not preserved. We affirm.

**I. SCOPE OF REVIEW.**

The scope of review in termination cases is *de novo*. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). The State has the burden of proving the grounds for termination by clear and convincing evidence. *See In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). A parent has the right to due process and a fair trial when the State seeks to terminate parental rights. *In re R.B.*, 493 N.W.2d 897, 898 (Iowa Ct. App. 1992); *see also Alsager v. Iowa Dist. Ct.*, 406 F. Supp. 10, 22 (S.D. Iowa 1975). A parent's right to have custody of his or her child should be terminated only with the utilization of the required constitutional safeguards. *See Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042, 1045 (1923); *In re T.R.*, 460 N.W.2d 873, 875 (Iowa Ct. App. 1990). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434

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<sup>1</sup> The parental rights of the father of the three children were also terminated but he has not appealed. He showed little interest in the children and was released from jail in April of 2008.

U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972).

The issue of whether or not to sever the biological ties between parent and child legally is an issue of grave importance with serious repercussions to the child as well as the biological parents. See *R.B.*, 493 N.W.2d at 899. The goal of a child-in-need-of-assistance proceeding is to improve parenting skills and maintain the parent-child relationship. A parent does not have an unlimited amount of time in which to correct his or her deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997).

When the juvenile court terminates parental rights on more than one statutory ground we need find grounds to terminate parental rights under only one of the sections cited by the juvenile court in order to affirm its ruling. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

## **II. BACKGROUND.**

Police were called on Thursday, January 25, 2007, at 4:50 in the afternoon to a residence Sara occupied with her two older children and a boyfriend.<sup>2</sup> Sara at the time was pregnant with the third child involved in this proceeding and she was absent from the home for a prenatal appointment.

Upon entering the house the police found the older child in a bathtub filled with four to six inches of cold water. Cold water was also running from the shower head on the child. The boyfriend said the child had dirtied himself and was being washed off. The younger child was in bed. A next door neighbor

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<sup>2</sup> He initially was incorrectly identified as the children's father.

reported she had called the police when she heard the man beating the children again. She said she heard a child screaming at the top of his lungs because he was being beaten, and she could hear the child being hit with what sounded like a belt and the man asking "why are you making me do this to you?" She said she also heard a sound like the child hitting a wall after being thrown there. She said it had been going on for at least an hour before the police arrived. She further reported the man had been beating the children since she moved next door to Sara's residence on January 1, 2007. She said sometimes a woman was there when the beatings occurred. Another neighbor reported she could hear what sounded like a child being beaten and hearing a man yelling at a child in the past. The man saying, "Do you think a parent wants to clean the shit off of your ass?" She said it had been ongoing and thought currently it involved potty training. She said the woman wasn't there at the time but that she was there at the time of other beatings and she heard the man beat the woman. She also heard the man say, "I'll kill you and these kids; I don't care about going back to jail."

The boyfriend was taken into custody. He told the officers that the older child removed his diaper, smeared feces on the floor and he was frustrated because the child had defecated and the younger child had thrown up. The boyfriend said he put child in the tub without checking the temperature of the water because he was so busy attempting to care for both children. He said he should have checked the temperature of the water but did not. He said he should have done suicide by cop forcing the cops to kill him when they came in

the house. The boyfriend said he spanked the children when they did not perform as they should in potty training and said both children bruise easily. He also admitted hitting the older child with a belt.

Both children were taken to the hospital. The older child's body temperature on admittance to the emergency room was 87.1 degrees. He had extensive bruises on his forehead, arms, chest, and legs. There were superficial cut marks over his left chest, left arm, and part of his abdomen. He had an old round burn mark over his neck and posterior aspect of his left leg. He had a bruise and swelling over his left eye. He was not in respiratory distress, his eardrums were normal, his lungs clear, and he had an ulcer over his lower lip. A CT scan showed no intracranial hemorrhage or hematoma. There were no mass lesions or mass effect. An abdominal sonography showed a nonvisualized pancreas because it was obscured by bowel gas but an otherwise normal abdominal cavity.

The younger child had bruises on her forehead. Her laboratory data was unremarkable and she had a normal skeletal survey, and a negative eye examination for retinal hemorrhages.

The children were placed in foster care originally with their maternal grandparents who cared for the children for a period but subsequently asked to be relieved of their care. The grandparents apparently were managing a motel and restaurant and their employer did not want the children there. At no time prior to the termination hearing did the grandparents request that the children be returned.

The boyfriend was charged with and convicted of child endangerment and neglect of a dependent person. He received a thirty-year sentence. Sara was also charged with and convicted of the same crimes. It was nearly a year later, on February 21, 2008, that Sara was sentenced to ten years in prison.

Her profile indicated she was born in March of 1985. She was in foster care for thirteen months and then was adopted. She knows little about her biological parents. She denied any physical or emotional abuse as a child but felt her parents treated her differently than her two brothers because she was adopted. She has never married but has had relationships with three men. She reported she needs to feel love. She denies having abused illegal substances or alcohol but has associated with persons who do. She finished high school and has held jobs. She has been defined as a personable person and is intelligent.

After the removal, efforts were made to reunify Sara with her children. To assist Sara in facing past issues and assisting her in dealing with the issues of the children's having been removed from her care she was offered and completed a psychological evaluation. Mental health counseling was offered. She initiated contact with mental health providers but failed to follow through. She might go to three sessions and not continue. She was offered visitation and there are reports that indicate she was making substantial progress in her relationship with the children and that she was bonded to them. Though Sara had good visits with the children, she would show up some times and other times she would not, saying she was working or had no transportation. She would cancel visits at the last minute. Unfortunately, despite her commitment to

working to have her children returned her efforts at times were sporadic. Stable housing was an issue for her. She was behind on rent, which made maintaining current housing and obtaining new housing difficult. She does not appear to have been given housing assistance. By May of 2008 she had been sentenced and was in Oakdale.

The termination hearing was set for May 30. Sara requested transportation to attend the hearing, her request was granted, and she appeared at the hearing and testified. Sara related she was incarcerated at Mitchellville where she was enrolled in parenting classes and also hoped to take domestic violence counseling and victim impact and criminality as well as computer classes. She anticipated she would apply for reconsideration of her sentence in August of 2008.

The children by this time had been in foster care for fifteen months<sup>3</sup> and there is no pre-adoptive home for the two older children because the foster care parents recently indicated they do not want to make a permanent commitment to the children. The permanency plan was to put the two children in an adoptive home together with a child<sup>4</sup> born while Sara was incarcerated.<sup>5</sup> The son born in February of 2007 was to remain with his aunt.

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<sup>3</sup> Apparently they had been in five different foster homes.

<sup>4</sup> The parental rights of this child are not at issue here.

<sup>5</sup> The file includes a report that by July of 2008, the State found an adoptive home where the children moved on June 20, 2008. The family has three biological teenage girls and had recently adopted a four-year-old boy. The report indicated the adoptive parents were a couple with a stay-at-home mother. As this report was not in evidence at the termination hearing we do not consider it in our decision.

After a hearing the juvenile court terminated Sara's parental rights to the three children under Iowa Code sections 232.116(1)(d), (e), (h), (j), and 232.117 (2007).

### **III. EVIDENCE SUPPORTING GROUNDS FOR TERMINATION.**

Sara does not argue that there was not clear and convincing evidence supporting the grounds for termination. Our review convinces us that one or more the grounds found by the juvenile court are supported by clear and convincing evidence.

### **IV. CONSIDERATION OF SECTION 232.116(3)(a) AND (c) FACTORS.**

Sara argues that Iowa Code sections 232.116(3)(a) and (c)<sup>6</sup> provide that the court does not need to terminate if the children are in the custody of relatives or if termination would be detrimental to the child due to the closeness of the parent-child relationship. The State contends that error on these issues has not been preserved, noting that an issue not presented to and passed on by the juvenile court may not be raised on appeal for the first time, even one of constitutional dimensions, citing *In re C.N.*, 600 N.W. 2d 29, 28 (Iowa 2003). Without addressing the preservation of error issue we find no reason to reverse on this argument. The youngest of the three children apparently is in the care of Sara's sister. Sara's parents had the two older children for a short time before

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<sup>6</sup> Iowa Code section 232.116(3) provides:

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

....

c. 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.



they asked that the children be put in foster care. They do not have custody. At the time of the termination hearing they had not asked that the children be returned to them, though they had requested visitation. Nor is it clear they could obtain legal custody. When asked if they would be able to care for the children if Sara's parental rights were terminated the grandmother said, "We would have to." The grandmother said her mother wanted the older child. The grandmother said she would take him. The older children were not in the legal custody of a relative at the time of the hearing. The juvenile court did not err in not refusing to terminate because the youngest of the three children was in the care of an aunt. There was clear and convincing evidence supporting the termination and there is no evidence that terminating the child's parental rights and allowing the aunt to adopt the child was not in the child's best interest.

Sara also contends 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. We disagree.

**AFFIRMED.**