

IN THE COURT OF APPEALS OF IOWA

No. 8-634 / 08-1023
Filed August 13, 2008

**IN THE INTEREST OF F.L., R.L.-B. and L.H.,
Minor Children,**

N.H., Mother,
Appellant,

T.D.C., Father of L.H.,
Appellant.

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

A mother of three children and the father of one of those children appeal
from the order terminating their parental rights. **AFFIRMED.**

Marc Elcock of Elcock Law Firm, West Des Moines, for appellant mother.

Nancy L. Pietz, Des Moines, for appellant father.

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

Patrick O'Bryan, Des Moines, for appellee father.

John Jellineck of Public Defender's Office, Des Moines, for minor children.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

N.H. is the mother of L.H., who was born in 2001, R.L.-B., who was born in 2004, and F.L., who was born in 2005. T.C. is the father of L.H.¹ The family first came to the attention of the Iowa Department of Human Services (DHS) in 2007 when R.L.-B. tested positive for cocaine during a child protective assessment investigation and N.H. tested positive for THC. Later, F.L. tested positive for cocaine. The children were removed from their mother's care following an emergency removal order in March 2007. After an uncontested hearing, the children were all adjudicated to be in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (n) (2007). In addition, F.L. and R.L.-B. were adjudicated under section 232.2(6)(o).

On February 27, 2008, the State filed a petition seeking to terminate N.H.'s parental rights to all three children, and T.C.'s parental rights to L.H. Following a hearing on that petition, the court granted the State's request to terminate the parents' rights. It terminated N.H.'s rights under section 232.116(1)(h) and (l), and T.C.'s rights under sections 232.116(1)(f) and (j). Both parents appeal from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). While the

¹ R.L., as the father of F.L. and R.L.-B., also had his parental rights terminated but is not a party to this appeal.

district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

T.C.'s Appeal. On appeal, T.C. maintains termination was not supported under the Code provisions cited, termination was not in L.H.'s best interests, and termination was not appropriate given that the child was in the care of a relative. Upon our de novo review of the record, we affirm the termination of T.C.'s parental rights to L.H. See Iowa Code § 232.116(1)(f) (child is four or older, has been adjudicated CINA, has been removed for twelve months, and cannot be returned to the parent's custody). There is little evidence that T.C. was involved in his daughter's life prior to the juvenile proceedings and at the time of the termination proceedings he was incarcerated, serving a life sentence at a federal prison in Pennsylvania. While he claims he has been involved in the juvenile proceedings "through counsel," he remains in no position to care for or provide any sort of support for L.H. at any time in the future. Given the need for permanency and L.H.'s present setting in a potentially adoptive home, termination is in the child's best interests.

N.H.'s Appeal. N.H. claims termination was unsupported under the cited Code sections, termination is not in the best interests of the children, and the court need not have terminated her parental rights because the children were in a relative placement. Upon our de novo review, we reject each of these claims.

In the summer of 2007, N.H. did make some progress in overcoming her addictions. However, her longstanding history of drug use coupled with distribution prevailed as she soon relapsed. She admitted to having used and

sold crack since the age of sixteen and later abusing marijuana and cocaine. Throughout this case, N.H. has been untruthful about her drug use, routinely denying such use even while testing positive for the presence of drugs. She even admitted at trial having switched from marijuana to cocaine in July or August of 2007 in an effort to avoid drug screens given by DHS. On December 28, 2007, she was arrested for possession of crack cocaine with intent to deliver and was incarcerated both at the time of the final permanency hearing and the termination hearing. Because of this incarceration, she was not available for in-home services or visits with the children. Accordingly, we conclude the record fully supports termination under section 232.116(1)(f) (CINA, parent has severe, chronic substance abuse problem, child cannot be returned to parent's custody within a reasonable period of time).

For similar reasons, we agree that termination of N.H.'s parental rights was in the best interests of the children, regardless of their placement with a relative. See Iowa Code § 232.116(3). N.H.'s history is one of placing her children in harm's way, be it with drugs or with dangerous individuals. Her inability to come to terms with and minimization of the issues that have repeatedly endangered the children give us a good indication of the future the children might be exposed to if they were returned to her care. While there may be a bond between her and the children, those bonds do not outweigh the children's need for safety and permanency. See *In re J.E.*, 723 N.W.2d 793, 801 (2006) (Cady, J., concurring specially).

AFFIRMED.