

IN THE COURT OF APPEALS OF IOWA

No. 9-781 / 09-1224
Filed October 7, 2009

**IN THE INTEREST OF L.G. and D.V.-G.,
Minor Children,**

D.V.-G., SR., Father,
Appellant,

V.K.D., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father and mother separately appeal from the order terminating their
parental rights to two children. **AFFIRMED ON BOTH APPEALS.**

Kevin M. Blackman of Nelissen & Juckette, P.C., Des Moines, for
appellant-mother.

John E. Swartz, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Cory McClure,
Assistant County Attorney, for appellee.

Karl Wolle, Des Moines, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

A mother and father appeal from the order terminating their parental rights to their two children, born in 2006 and 2008. The mother contends the statutory ground for termination is not supported by clear and convincing evidence and that termination is not in the children's best interests. The father contends the court should have exercised its discretion not to terminate because of the closeness of the parent-child relationship. We affirm on both appeals.

BACKGROUND. The family came to the attention of the Department of Human Services in September of 2008 when the younger child was born testing positive for methamphetamine, and allegations of domestic violence were made against the father. In early October all parties stipulated to the removal and the children were placed with relatives. Placement was changed to foster care about a week later when the relatives indicated they could not care for the children. The children have remained in the same foster placement throughout these proceedings.

Both parents have a history of illegal substance use. During this case the mother participated unsuccessfully in substance abuse treatment. The father was evaluated and began treatment, but did not follow through. Neither parent has participated in required drug screens. Both parents exercised supervised visitation, but neither was consistent. Both parents report a history of mental health issues. The father was incarcerated during part of this case based on positive drug tests while on probation.

In June of 2009, the State petitioned to have both parents' parental rights terminated. Following a contested hearing, the court terminated both parents' rights under Iowa Code section 232.116(1)(h) (2009).

SCOPE AND STANDARDS OF REVIEW. Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 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). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. See Iowa Code § 232.117. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

MERITS. *Mother.* The mother contends the statutory ground for termination was not established by clear and convincing evidence. She argues she "has shown that she is capable of managing her own health care needs and has shown that the children would not suffer from adjudicatory harm if they were

returned to [her].” She further argues she “has stated a willingness to move forward and maintain sobriety, seek support, and live a healthy lifestyle.”

Although the mother says she is willing to move forward, she has not taken action. She was unsuccessfully discharged from inpatient substance abuse treatment. She has not done anything about her mental health issues. She failed to participate in drug screens almost twice as often as she participated. We find the children would be at risk of adjudicatory harm if returned to her care. See Iowa Code § 232.102(5). We find clear and convincing evidence supports termination of the mother’s parental rights under section 232.116(1)(h).

The mother contends termination is not in the children’s best interests. She argues she shares a bond with the older child and is working on developing a bond with the younger child. This argument implicates Iowa Code section 232.116(3)(c), which gives the court discretion to avoid termination if clear and convincing evidence shows termination would be detrimental to the child because of the closeness of the parent-child relationship.

“Even if statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children.” *In re M.S.*, 519 N.W.2d 398, 400 (Iowa Ct. App. 1994). A strong parent-child relationship is a special circumstance that militates against termination when statutory grounds have been satisfied. Iowa Code § 232.116(3)(c); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Yet it is not an overriding consideration, but merely a factor to consider. *N.F.*, 579 N.W.2d at 341. Section 232.116(3) is permissive,

not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the children, whether to apply this section. *Id.*

Although the record reveals the mother has a bond with the older child and is developing a bond with the younger child, there is no indication either parent-child bond is strong or that the closeness of the bonds is such that termination of the mother's parental rights would be detrimental to either child. We have considered both the immediate and long-term interests of the children. *See id.* They need and deserve permanency now. Their mother cannot provide what the children need now. *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."). We agree with the district court's conclusion.

Father. The father contends the court "erred in terminating the parental rights of the mother due to the closeness of the parent-child relationship." (Emphasis added.) The argument in the father's brief relates to the father, however, not the mother, so we address his claim as if it had been stated correctly.

From our review of the record, we disagree with the father's claim he has a close relationship with the children. As with the mother, the evidence before us shows there is a parent-child bond, but the father has less of a bond with the children than with the mother because the father has been absent from the

children's lives for a greater part of the time they have been in foster care. This is the result of his incarceration for violating probation. We find no basis to avoid termination on this discretionary ground. We affirm the termination of the father's parental rights.

AFFIRMED.