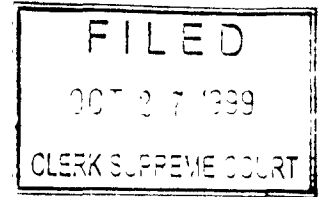


IN THE COURT OF APPEALS OF IOWA

No. 1999-241 (9-465) / 99-0505
Filed October 27, 1999



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

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

Appeal from the Iowa Associate District Court for Polk County, Glenn E. Pille,
Juvenile Judge.

Mother appeals the termination of her parental rights to her two children. She contends the court erred in finding (1) she has not maintained significant and meaningful contact with the children in the last six months despite being given the opportunity to do so, (2) the circumstances which led to the adjudication continue to exist, and (3) the termination would be in the best interests of the children.

AFFIRMED.

Todd E. Babich of Babich, McConnell & Renzo, P.C., Des Moines, for
appellant.

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

Heather Dickinson, West Des Moines, for minor children.

Michael B. Oliver, Des Moines, attorney for father.

Heard by Sackett, C.J., and Zimmer and Miller, J.J.

SACKETT, C.J.

Veronica, the mother of daughters VerLayia and VerjJayai, born in the 1994 and 1997 respectively, appeals following the termination of her parental rights. The father of the older child is dead. The rights of the younger child's father have been terminated and he has not appealed. We affirm.

The children were placed in foster care within a month of the younger child's birth, who after she was born tested positive for THC and methamphetamine. There also was evidence Veronica and the younger child's father were abusing drugs.

After the children were removed from her care, Veronica was to have a substance abuse evaluation and follow recommended treatment. Veronica was to be granted visitation with the children after she delivered two urinalyses showing she was no longer using illegal substances.

Following the children's removal from her care Veronica had no contact with them and minimal contact with the department of human services. Veronica did have a substance abuse evaluation in early January of 1998, and it was recommended she enter a residential treatment program. She was admitted to one and left seven days later as **she had not complied with the treatment program**. Veronica attended some parenting class. She submitted urine samples. A January 23, 1998 urine sample showed cocaine and cannabinoids; a January 29, 1989 sample showed the presence of cocaine; a January 30 of 1998 and one March 31 of 1998 showed no drugs. A sample on May 11, 1998 showed cocaine.

Then in August of 1998 following a conviction on a forgery charge Veronica was incarcerated at the women's prison in Mitchellville. She is scheduled to be released on January 20, 2001, but could be released as early as the year 2000. While in Mitchellville Veronica has successfully completed a substance abuse program, family relations program, self-esteem program and the re-entry orientation program. Certificates that she had completed the courses were admitted without objection.

The state advances that Veronica has not been a good prisoner and she had just been disciplined by being in the hole. Veronica admitted the punishment, but claims the punishment was because she told on a guard who made sexual advances. The record is not sufficient for us to address this issue.

Veronica requested visitation with the children while in Mitchellville. This was denied by the juvenile court. She took no appeal from the denial. Despite the state's refusal to grant her visitation she has kept in contact with the children's foster mother and the children through the exchange of cards, letters, and pictures.

On November 3, 1998, the state filed a petition to terminate Veronica's parental rights, and on March 10, 1999 the juvenile court did terminate her parental rights under Iowa Code sections 232.116(1)(c), (1)(d), (1)(e) and (1)(g) of the 1997 Code of Iowa.

We review Veronica's claims that her parental rights should not have been terminated de novo. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App.1993). We give weight to the findings of fact of the juvenile court, especially when considering the

credibility of witnesses, but we are not bound by those determinations. *In re W.G.*, 349 N.W.2d at 491-92.

The state bears the burden of proving the allegations of its petition by clear and convincing evidence. See *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982); *In re T.B.B.*, 460 N.W.2d 881, 882 (Iowa App.1990).

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 (Iowa App.1992); see also *Alsager v. Iowa District Court of Polk County*, 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 App.1990). 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).

The issue of whether or not to legally sever the biological ties between parent and child 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. An underlying issue in a termination action is whether the

parent is beyond help. A parent does not have an unlimited amount of time in which to correct his or her deficiencies. See *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990).

Termination is a drastic, final step which improvidently employed can be fraught with danger. Termination must only occur where more harm is likely to befall the child by staying with his or her parents than by being permanently separated from them. *Alsager v. District Court*, 406 F.Supp. 10, 24 (S.D.Iowa 1975). The state's interest in protecting children must be balanced against the parents' countervailing interest in being able to raise their children in an environment free from government interference. *Alsager*, 406 F.Supp. at 22.

Termination is an outcome of last resort. To legally end a relationship with an ineffectual but loving and caring parent without being reasonably assured of any hope of permanency with an adopted family is of doubtful advantage to a child. See *S.J.*, 451 N.W.2d at 832.

Veronica basically advances three arguments: (1) that she has corrected the problem that lead to her children being removed from her care, (2) she has maintained contact with her children, and (3) the reasons the children cannot be returned to her care is because she is incarcerated.

Veronica made no effort to seek the return of her children and little effort to improve her life prior to her going to Mitchellville though there is evidence at the time she was incarcerated she was attempting to enter another treatment program.

Veronica argues that the efforts she has made since her incarceration and her expressed wishes to take care of the children on her release negate against termination.

A social worker testified she supported termination because of (1) continued concerns about Veronica's substance abuse, (2) her lack of safe and stable housing, and (3) her ability to protect the children.

Veronica's problems stem from her abuse of illegal substances. She is not using them at the current time. The state argued and the juvenile court found that she cannot show she is recovering until she illustrates she can stay sober outside the prison setting. Of course to make such a showing is impossible for Veronica at this time because she is incarcerated, as is her ability to provide a place for the children to live.

A focal question is whether Veronica has actually turned her life around or whether she will revert to old habits on her release from prison. The juvenile court had Veronica before him. His finding indicates he does not believe Veronica will have the ability to care for the children on her release. She made no effort before incarceration. Giving the required deference to the factual finding of the juvenile court, we affirm.

Affirmed.