IN THE COURT OF APPEALS OF IOWA

No. 7-797 / 97-1397

000281

IN THE INTEREST OF A.R., J.R., and G.B., JR.,
Minor Children,

B.R., Mother,
Appellant,

G.B., Sr., Father of G.B., Jr.,
Appellant.

FILED
FEB 25 1998
CLERK SUPREME COURT

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

A mother and father appeal from the termination of their parental rights. **AFFIRMED.**

Penelope C. Souhrada, Davenport, for appellant mother.

Lauren M. Phelps of Phelps and Phelps, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee State.

G. David Binegar, Davenport, for minor children.

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

MAHAN, J.

Brenda and Gene, Sr. appeal the termination of their parental rights. Brenda is the mother of Jerusha, born in 1991; Andrew, born in 1994; and Gene, Jr., born in 1996. Gene, Sr. is the father of Gene, Jr. Brenda and Gene, Sr. are not married and no longer live together.

A report of physical abuse of Jerusha and Andrew was filed in January 1995. Upon investigation, the physical abuse was undetermined, but the report was founded for both children on the basis of the filthy, unsafe home conditions and inadequate sleeping arrangements. The Department of Human Services (DHS) filed children in need of assistance petitions (CINA) in March 1995. Jerusha was adjudicated CINA on June 8, 1995. Andrew was adjudicated CINA on August 3, 1995. After a physical abuse report in which Jerusha identified Gene, Sr. as her assailant, the two children were removed from the home on October 25, 1995, and subsequently placed in foster care. Gene, Jr. was placed in foster care on February 8, 1996, the day after his birth. He was adjudicated CINA on March 19, 1996. None of the children have been returned to their parents' care since their removal.

We review the termination of parental rights de novo. *In re A.L. and K.B.*, 492 N.W.2d 198, 200 (Iowa App. 1992). We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*; Iowa R. App. P. 14(f)(7). "Such things as the demeanor of the parties, the candor or lack thereof of the witness, the attitudes, real and assumed, and the apparent

motives of those testifying, are entitled to much weight in making findings in these matters." *In re Morrison*, 259 Iowa 301, 306, 144 N.W.2d 97, 100 (1966).

The welfare and best interests of the child are our governing concerns. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984); *In re Henderson*, 199 N.W.2d 111, 120 (Iowa 1972). Although parents have a legitimate interest in the integrity of the family unit, that interest is not absolute. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In determining the best interests of the child, we consider what the future likely holds for a child if the child is returned to parental custody. *Id.* We look at the parents' past performance of caring for their child, as their past performance is indicative of their future care. *In re B.B.*, 500 N.W.2d 9, 11-12 (Iowa 1993).

The State has a duty to assure children within its borders receive adequate care and treatment. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996). Iowa's juvenile statutes are designed to effectuate that duty. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). A child cannot be returned to a parent under Iowa Code section 232.102 if by doing so the child would be exposed to any harm amounting to a new child in need of assistance adjudication. The threat of probable harm will justify termination, and the perceived harm need not be the one that supported the child's initial removal from the home. *Id.*; *In re C.M.T.*, 433 N.W.2d 55, 56 (Iowa App.1988). It is enough to terminate if any one of the definitional grounds of a child in need of assistance are met. *In re M.M.*, 483 N.W.2d at 815; *see In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The legislature has made a categorical determination the needs of a child are

promoted by termination of parental rights in cases meeting the criteria of Iowa Code section 232.116(1)(e). *In Interests of M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *see Dameron*, 306 N.W.2d at 744-45 (Iowa 1981).

I. TERMINATION OF BRENDA'S PARENTAL RIGHTS. Brenda asserts on appeal: (1) there was insufficient evidence to support terminating her parental rights, and (2) termination of her parental rights would be detrimental to the children because of the close parent-child bonds. She argues the evidence does not support the court's findings she had not maintained significant and meaningful contact with her children and the risk of physical abuse remained. She also argues the court based its decision on incorrect information and that her failure to obtain suitable housing was because the service providers did not give her enough assistance.

Our review of the record reveals clear and convincing evidence of at least the following facts. Brenda has struggled with parenting Jerusha and Andrew, even with services provided by Illinois and Iowa. She has not obtained employment or housing which would permit her to care for her children adequately. Brenda has allowed others to abuse her children physically and sexually. She consistently makes poor choices in the men with whom she has relationships. Brenda relies on assistance from the State to provide adequate shelter for her children. Although Brenda has exercised her visitation privileges, she has not made the changes in her life which would allow her children to be returned to her safely, even for a trial period.

Based on the facts set forth above, there is more than sufficient evidence in the record to affirm the termination of her parental rights. Although Brenda wants a closer relationship with her children, she has not done more to encourage and maintain a significant and meaningful relationship with them than exercising her visitation. Her choices in relationships clearly show the risk of physical and/or sexual abuse remains. We therefore affirm the juvenile court's termination of Brenda's parental rights to Jerusha, Andrew, and Gene, Jr.

II. TERMINATION OF GENE, SR.'S PARENTAL RIGHTS. Gene, Sr.'s appeal relates only to his son, Gene, Jr. On appeal, he argues terminating his parental rights is not supported by the evidence and is not in Gene Jr.'s best interest. He asserts he has complied with all of the case plan requirements except undergoing a substance abuse evaluation and any recommended treatment. The State also asserts he remains unwilling to admit abusing Jerusha or Andrew. The juvenile court terminated Gene, Sr.'s parental rights under Iowa Code sections 232.116(1)(d) and (g).

From our de novo review of the record, we do not find clear and convincing evidence in support of termination under 232.116(1)(d) because Gene, Sr. has maintained significant and meaningful contact with Gene, Jr. -- to the extent possible with his limited supervised visitation. However, we do find clear and convincing evidence, pursuant to section 232.116(1)(g) Gene, Jr. cannot safely be returned to his father's custody at this time.

Gene, Sr. has not resolved significant issues of his abuse as a child, anger, and substance abuse. He is described as quickly frustrated, irritable, and moody. He demonstrates extremely limited personal insight, tending to appear overly self-confident. He exhibits a low frustration tolerance, quick irritability, and spontaneous anger, but is not motivated to change. All of these characteristics of his personality would place his active toddler son in imminent danger of abuse if they were reunited.

Until the time of the termination hearing, Gene, Sr. continued to resist any efforts to help him resolve his childhood abuse and how it affects his actions as a parent. He also refused to participate in a substance abuse evaluation and any recommended treatment, even though he admitted past problems with alcohol. His threats toward caseworkers when circumstances did not meet his approval reinforce his explosive potential which could quickly prove dangerous to his son if they were reunited.

We therefore conclude termination of his parental rights under Iowa Code section 232.116(1)(g) appropriate and necessary.

AFFIRMED.