FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-267 / 92-316

IN THE INTEREST OF G.O., A Minor Child,

L.O., Mother,

Appellant.

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Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Juvenile Referee.

The mother appeals from a juvenile court decision terminating her parental rights. **AFFIRMED.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; and Jean Becker, Assistant County Attorney, for appellee State.

Mary Lynn Neuhaus, Dubuque, guardian ad litem for the child.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

When Gina[1] was born on August 4, 1989, her four older siblings had already been adjudicated to be children in need of assistance and placed in foster care. Lisa and Eldon, Gina's mother and father, have since had their parental rights to the four older children terminated. See In re S.O., No. 115/91-867, slip op. (Iowa filed Apr. 15 1991).

As a result of the CINA proceedings involving Gina's four older siblings, the juvenile court had issued a no-contact order prohibiting Eldon, the father, from having any contact with the children. This was necessary because Eldon had sexually and physically abused the older siblings.

In December of 1990, Gina was also adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.96 and 232.2(6)(b) and (c). The juvenile court found Gina was in imminent danger of being abused as well. The court found Lisa, the mother, was unable or unwilling to adequately protect Gina from Eldon The court found Lisa had repeatedly allowed Eldon to violate the no-contact order. In addition, the juvenile court found Lisa had neglected Gina by providing a home with unsanitary and

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1. Gina, Lisa, and Eldon are not the parties' real names. The child's initials are G.O.; her mother's initials are L.O.; and her father's initials are E.O. We have used the pseudonyms Gina, Lisa, and Eldon throughout the opinion for the sake of simplicity in identifying the parties.

unsafe conditions. Accordingly, the juvenile court ordered custody of Gina transferred to the Department of Human Services.

The juvenile court entered a dispositional order on January 10, 1991, allowing Lisa to have supervised visitations with Gina and ordering Lisa to attend family counseling. On March 29, 1991, the juvenile court filed a second dispositional order finding Lisa had not made adequate progress toward reaching the goals set for her by her counselors. The juvenile court found Eldon was living in a trailer parked in front of Lisa's residence and that this constituted a substantial violation of the no-contact order between Eldon and the child. The court was also concerned with Lisa's failure to provide for Gina's safety and with Lisa's inappropriate discipline and verbal abuse of Gina. Custody of Gina was ordered to remain with DHS.

On May 31, 1991, the juvenile court filed a dispositional order granting Lisa unsupervised and extended overnight visitation with Gina. On or about August 7, 1991, while services were ongoing, Lisa absconded with the child to the Tulsa, Oklahoma, where Eldon lived. This constituted a clear violation of court orders. Gina was returned to the state of Iowa and placed in foster care on August 19, 1991. Two days later, the juvenile court ordered all visitation be supervised.

On October 29, 1991, the State filed a petition for termination of Lisa and Eldon's parental rights to Gina.

Lisa was present at the hearing; Eldon was not. On February 5, 1992, the juvenile court entered an order terminating Lisa and Eldon's parental rights to Gina, pursuant to Iowa Code sections 232.116(f), and 232.116(g). The juvenile court found Lisa had made little or no progress in counseling and had failed to recognize and address the danger of sexual abuse in her family. The juvenile court also found Lisa continued to place Gina at imminent risk of physical and sexual abuse by allowing Eldon to have contact with her. The court determined Gina did not have a strong family bond with Lisa and was doing very well in foster care. Finally, the court found Eldon had failed to seek treatment for his substance abuse problem and had failed, as well, to address his history of sexually and physically abusing his children. Accordingly, the juvenile court concluded Gina could not safely be returned to the custody of either parent.

Lisa has appealed; Eldon has not.

Our standard of review in this termination of parental rights action is de novo. Iowa R. App. P. 14(f)(7); In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222 (1985). We give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92. Our paramount consideration is the best interests of the child. Iowa R.

App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The relevant facts in this case are essentially undisputed. The juvenile court found these facts constituted grounds for termination under two sections of the statute. One of the bases used by the court to terminate was the existence of clear and convincing evidence to support a finding that, at the time of the hearing, Gina could not be returned to the custody of either parent as provided in Iowa Code section 232.116(1)(g) (1991). Lisa contends the record does not contain evidence sufficient to warrant termination. On our review, we agree with the juvenile court's assessment of the evidence and affirm the court's order terminating Lisa's parental rights to Gina.

Lisa concedes all the statutory grounds of Iowa Code section 232.116(1)(g) (1991) have been satisfied except for subsection (4) which necessitates a finding the child cannot be returned to the custody of the child's parents at the time of the hearing. A child cannot be returned to the custody of his or her parents, within the meaning of section 232.116(1)(g), when any one of the grounds listed in section 232.2(6)(child in need of assistance) could be proven by clear and convincing evidence. See, e.g., In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988). Lisa argues the State has failed to prove this requirement by clear and convincing evidence. We disagree.

The years of services Lisa has received have had little or no effect in helping to alleviate the problems which led to Gina's CINA adjudication. We are convinced Lisa remains unable or unwilling to protect herself or Gina from abuse and predation. Since the previous termination hearing, Lisa has lived with another man who physically beat her, yet she has rejected suggestions she receive help. Despite her historically abusive environment, Lisa refuses to accept domestic violence or sexual abuse treatment. Before the final termination hearing in January 1992, Lisa had been living with one of her brothers who had sexually abused his own stepdaughters. Lisa appears intent upon reuniting with Eldon, who is an untreated child sexual abuser. Lisa does not feel she has any problems with parenting.

Those who have acted as Lisa's service providers for the past three years recommended Lisa's parental rights be terminated. Ms. Lux, a family preservation worker, and Ms. Smith, a family therapist, both testified Gina would be subjected to the risk of sexual, physical, and emotional abuse if she were returned to Lisa's custody. Ms. Novak, Lisa's caseworker, also recommended termination. Based on her contacts with Lisa, Ms. Novak believed Lisa could not protect and care for Gina. Ms. Novak testified Gina was doing very well in foster care. She had not observed a close mother-child bond between Lisa and Gina Ms. Currier, a DHS caseworker, recommended termination based on her

belief the risks of sexual and physical abuse are still present in Lisa's home. She testified Gina is very adoptable.

We find the record contains clear and convincing evidence that if Gina were returned to her mother's home she would once again be a child in need of assistance under Iowa Code section 232.2(6)(b),(c) and (d). Furthermore, we believe it is in Gina's best interests that Lisa's parental rights be terminated. We affirm.

The costs of this appeal are taxed to the appellant.

For all the reasons stated, the judgment of the juvenile court is affirmed.

AFFIRMED.