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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-481 / 94-1051

IN THE INTEREST OF A.H. and D.I., Minor Children,

V.H.I., Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, Michael A. Woods, Associate Juvenile Judge.

Mother appeals the juvenile court's order terminating her parental rights to her two children. **AFFIRMED.**

Jeffrey D. Bert of Anderson & Nelson, Rock Island, Illinois, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

Eugene F. Dwyer of Dwyer, Wing, Zamora, Taylor & Walters, Davenport, guardian ad litem, for minor children.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

HABHAB, J.

V.I. is the mother of A.H., born January 22, 1986, and D.I., born June 5, 1987. The girls' father or fathers are unknown. K.I. was originally thought to be the girls' father until February 1994 when results of a blood test revealed he was not.

The Department of Human Services (DHS) first became involved with A.H. in March 1992 when V.I. made a report of sexual abuse of A.H. by E.B., a man V.I. dated. Treatment for A.H. was delayed because DHS was unable to locate V.I. In approximately November 1992, V.I. began serving a sentence, entered upon her convictions of prostitution and burglary, at the Mitchellville Correctional Facility.

In February 1993, DHS filed a child in need of assistance petition regarding A.H. and D.I. because they had been moved back and forth several times between K.I.'s home and their paternal aunt's home between October 1992 and February 1993. After an adjudicatory hearing in April 1993, the court found the girls to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(c), 232.2(6)(g), and 232.2(6)(n) because V.I. was in prison and K.I. was an inconsistent and at times inappropriate caretaker for them. Upon this finding, the court ordered the children placed in the paternal aunt's custody.

In May 1993, DHS discovered there was a founded sexual abuse report from 1985 against the paternal aunt's husband. As a result, the girls were placed in foster care

under the temporary custody of the DHS. After a dispositional hearing in July 1993, the court ordered the girls placed in the custody of DHS for placement in foster care.

The girls visited V.I. twice at the prison and exchanged letters with her.[1] While in prison, V.I. completed a parenting class. In July 1993, V.I. was released from prison on parole; however, when she failed to report to a half-way house at her appointed time, her parole was revoked and she was returned to prison.[2] V.I. was later placed in solitary confinement and requested the girls not visit her because she was not allowed to touch them.[3] V.I. was released from Mitchellville on February 1, 1994.

In March 1994, the girls' guardian ad litem filed a petition for termination of V.I.'s parental rights over A.H. and D.I. At the May 1994 termination hearing, V.I.'s counsel requested a continuance based on V.I.'s absence. The court denied the request finding that notice had been published three times and there were no immediate prospects

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1. One of these visits was cut short so V.I. could take advantage of a cigarette break.

2. V.I. was released on July 21, 1993, and rearrested on July 22, 1993, for failing to report in to the half-way house.

3. V.I. was placed in solitary confinement for having sexual relations with a prison guard.

of locating V.I.[4]

DHS caseworker Kristine Oswald testified it was impossible for V.I. to make progress toward the case permanency plan's goal until she was released from prison. She further testified V.I. had not contacted her, the children, or the foster mother since she was released from prison.

The court terminated V.I.'s and all unknown fathers' parental rights to A.H. and D.I. pursuant to Iowa Code sections 232.116(1)(e) and 232.117 (1993). V.I. appeals.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). 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. Id. at 491-92.

Iowa Code section 232.116(1)(e) (1993) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve

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4. The district court found published notice to be the only reasonable means of contacting V.I. A letter was also written to V.I.'s last known address, but this did not result in contact. V.I.'s attorney, at the time of termination hearings, did not know when or how to contact V.I.

> of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The only element of section 232.116(1)(e) in dispute is subsection 4 regarding "clear and convincing evidence that at the present time" A.H. and D.I. cannot be returned to V.I. V.I. contends there is a lack of clear and convincing evidence, and reasonable efforts were not made to reunite the children with their mother.

All that is required for subsection 4 to be met is a clear and convincing showing the children cannot be returned to the custody of V.I. This showing was satisfactorily made by evidence of V.I.'s behavior since her release from prison. At the time of the termination hearing, V.I. had made no attempt to contact her children, the children's foster home, or the court despite her promise to do so. There was no evidence V.I. made any effort whatsoever in the three months following her release from prison to contact anyone in an attempt to be reunited with her children. At the time of the hearing, V.I.'s attorney did not even know how to get in contact with V.I. It was impossible to return the children since no one knew where to find her. Section 232.116(1)(e) was clearly satisfied.

V.I. also argues a reasonable effort was not made to reunite her with her children since her release from

prison. V.I. essentially contends she was not given enough time to resurface following her release and the termination proceedings were premature. We disagree. At the time of the termination hearing, three months had passed without any contact between V.I. and any party involved in this case, including her children. There was no evidence presented which would indicate V.I. would be contacting anyone in the near future. Clearly, the best interests of the children require parental rights be terminated immediately and the children be allowed to establish permanency in their lives. See In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990) ("the best interests of a child are often not served by requiring the child to stay in "parentless limbo"").

We affirm the termination of V.I.'s parental rights regarding her children A.H. and D.I.

AFFIRMED.

Huitink, J., concurs; Sackett, P.J., specially concurs.

SACKETT, J. (specially concurring)

I concur specially. I agree with the majority, the mother has been an extremely irresponsible parent and the state has met its burden of proof to terminate parental rights. But, I do not end my inquiry there.

The children are seven and eight. At the time of the termination hearing, they had lived in a single foster care home for a year and were bonded to their foster mother. The foster mother has elected to terminate the foster-care relationship. It is anticipated this will be traumatic to the children.

The children, especially the older child, has a strong bond with her mother. The termination of her mother's parental rights will be traumatic to her.

I cannot assume these children, with special needs, will find a satisfactory adoptive home. I find no evidence in the record concerning the availability of any adoptive home for these children.

Their mother completed the class on being a parent available to her through the Iowa prison system. The termination petition was filed a month after her release. She was not personally served and did not appear at the termination hearing. She is interested enough in retaining her parental rights to appeal.

If these children will not be adopted and will spend the next decade in state care, moving from placement to

placement, they might better served by additional efforts to reunite them with their mother.

The guardian ad litem sought termination. I can only trust he will remain vigilant to assure the children find a satisfactory adoptive home. In joining the majority to affirm, I rely on the fact I expect the guardian ad litem to do so.