FILED
SEP 09 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-399 / 93-0483

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IN THE INTEREST OF M.T., N.M. and R.M., Minor Children,

B.M., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

B.M. appeals from the district court's termination of her parental rights to minor children M.T., N.M., and R.M. **AFFIRMED.**

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee-State.

Douglas Coonrad, Hudson, guardian ad litem.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J. 000566

Betty Martin[1], the mother of daughters born July 4, 1983, and twin daughters born November 11, 1986, appeals a trial court order terminating her parental rights to the children. Betty contends the juvenile court incorrectly determined termination was in the children's best interest and the juvenile court should not have denied her request that the home of her sister be considered as a custody placement for the children.

The mother does not challenge the finding there is clear and convincing evidence supporting a finding grounds for termination of parental rights have been proven. Her argument is there is a bond between her and the children that should not be broken and the children are bi-racial and, therefore, they will be difficult to place in an adoptive home as they have been difficult to place in foster homes. They have been in eleven different placements. She contends if an adoptive home is found, it may well result in separation of the children.

Even if grounds for termination are met, the court can decline to terminate parental rights if there is a determination that because of bonding or other reasons such action would be detrimental to the children.

Iowa Code section 232.116(3) (1991), grounds for termination provides:

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1. B.M. is the mother's initials. Betty Martin is not her given name.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
a. A relative has legal custody of the child.
b. The child is over ten years of age and objects to the termination.
c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.
d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.
e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to the active service in the state or federal armed forces.

Our review is de novo, see In re T.O., 470 N.W.2d 8, 9 (Iowa 1991), and a review of this record convinces us there clearly has been a very strong bond between the mother and children. The children have throughout the proceeding manifested their desire to be with their mother and the evidence is that a number of problems the children experienced in foster homes were manifested by their desire to be with their mother. Their mother currently is incarcerated and unable to assume their care.

While finding there is a close bond, we do not on this record determine it should prevent termination because there is nothing to show the mother will be in a situation soon where this relationship can be fostered. The statutory presumption that a child's best interest will be served by leaving the child with the child's parent is not

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conclusive. See In re L.L., 459 N.W.2d 489, 494 (Iowa 1990); In re D.P., 465 N.W.2d 313, 315-16 (Iowa App. 1990).

The mother's next contention is the juvenile court should have considered the home of her sister for placement. The State says there is evidence these children are adoptable. These are older children with serious emotional problems. The children have emotional problems from things that happened while in their mother's care. Their journey through our foster care system has compounded their problems. There have been eleven placements. Foster parents have asked to be relieved of their care. The children contended they were abused in foster care. There was no independent review of these allegations.

The children are bi-racial. The State's adoption specialist testified there would be homes for them as a family unit. The current foster family did not want to adopt them. The testimony by the adoption specialist is general and provided no specifics of the number of families interested in adopting such a unit. There is nothing in this record to support a finding the children definitely will be adopted. If they are adopted, our review of this record convinces us that these children will provide a number of difficult problems and challenges for any adoptive placement.

The petition for termination of parental rights was filed on October 19, 1992. On November 16, 1992, the mother filed a motion for a study of her sister's home in

North Carolina. On December 8, 1992, the mother's motion for the home study was granted. The juvenile court ordered the Department of Human Services immediately request a home study of the aunt's home and the Department make every effort to have the home study expedited. The court at that time further ordered the issue of placement in the aunt's home be heard simultaneously with the termination proceedings which was rescheduled for January 27 and 28, 1993. The home study was not completed in time for the termination hearing. The aunt did testify, telephonically, that she was willing to take the children. She also explained she lived in low rent housing and received some aid and she was willing to take the children on a long-term basis. She also testified she had left her husband because he was abusive. She testified her children had not had any problems with the law. The termination court did not wait for a home study but found "The children have had no meaningful contact with [the aunt]. [The aunt] herself has been a victim of abusive relationships and is unable to realistically perceive the severity of her sister's problems." The court went on to find "continuation of these ties would not be in the best interest of the children."

The question is whether the juvenile court made a premature determination on the issue without benefit of the report the Department of Human Services had been ordered to obtain. The juvenile judge had his own opportunity to

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listen to the aunt's testimony and made his own determination of her ability. While we are disappointed the Department did not follow the court's order and obtain the report, we find ample support in the record for the juvenile court's determination the aunt was not a satisfactory placement.

We affirm.

AFFIRMED.