

IN THE COURT OF APPEALS OF IOWA

No. 6-647 / 06-0905
Filed September 21, 2006

IN THE INTEREST OF P.S., Minor Child,

C.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother appeals the juvenile court order terminating her parental rights.

AFFIRMED.

Yvonne C. Naanep, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Charles Kenville of Kragnes, Tingle & Koenig, P.C., Des Moines, for father.

Karl Wolle, Juvenile Public Defender, Des Moines, guardian ad litem for minor child.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

PER CURIAM

A mother appeals the termination of her parental rights to her child. She contends termination is not in the child's best interest and the juvenile court erred in failing to apply Iowa Code section 232.116(3)(c) (2005). The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005).

The child at issue was born in November 1997. The mother has a history of substance abuse and mental health problems. Additionally, the parents had an abusive relationship. The child was removed from the mother's care in September 2004, after the mother left the child at a domestic violence shelter and did not return within a reasonable period of time.¹ The child was placed in foster care.

The child was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (2003) (parent is imminently likely to neglect child), (c)(2) (child is likely to suffer harm due to failure to supervise), and (n) (parent's mental condition results in child not receiving adequate care). The mother did not cooperate with services offered by the Department of Human Services. She admitted to social workers that she had relapsed into drug use. She failed to provide drug screens or attend individual therapy.

¹ The child had previously been removed from the mother's care in 2001, and adjudicated CINA. The child was eventually returned to the mother's care after she completed substance abuse treatment. The CINA case was closed in 2002.

In March 2006, the State filed a petition seeking to terminate the parents' rights. That same month, the mother was sent to jail for probation violations, where she remained at the time of the termination hearing in April 2006. The juvenile court terminated the mother's parental rights under sections 232.116(1)(d) (2005) (child CINA for neglect, circumstances continue despite receipt of services), (f) (child four or older, CINA, removed at least twelve months, and cannot be returned home) and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).² The mother appealed.

The mother asserts termination of her parental rights is not in the child's best interests. The mother points to section 232.116(3)(a), which provides the court need not terminate a parent's rights if "[a] relative has legal custody of the child." Application of section 232.116(3) is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the discretion of the juvenile court, based on the circumstances before it and the best interests of the child, whether to apply the section. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

At the time of the termination hearing, the child was in foster care. Shortly before the hearing, a maternal aunt had come forward and expressed an interest in having the child placed in her care. The mother argued the child should be placed with the aunt and her parental rights should not be terminated. The juvenile court declined to place the child with her aunt, stating:

² The father's parental rights were also terminated. He did not appeal.

Unfortunately, [the child], through no fault of her own, has experienced more than her fair share of placements and the accompanying separations. I believe that requiring another removal to place her with a relative she hardly knows, when [the child] is bonded to her foster parents, would be counterproductive.

The child's therapist also stated it would be too disruptive to take her from the most stability she had ever known, in the current foster home, and put her in an entirely new placement with the aunt. The therapist stated the child needed stability, consistency, and permanency, and "[the child] cannot endure repeated changes or failures of placements." We conclude the juvenile court did not abuse its discretion by not applying section 232.116(3)(a).

The mother also asserts the juvenile court should have applied section 232.116(3)(c), which provides a juvenile court may decide not to terminate a parent's rights if "[t]here 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." The juvenile court recognized this bond, but found termination was in the child's best interests. The court stated, "[The child] must be allowed to finish her childhood in a stable setting."

At the termination hearing, a social worker for the Department of Human Services testified the mother and child had a strong bond. She testified, however, that she believed termination was in the child's best interests despite this bond because the mother was not in a position to care for her daughter, and the child needed stability. The therapist also recommended termination, stating that as much as the child loved the mother, she recognized she could not trust the mother to provide for her. We find the juvenile court did not abuse its

discretion in finding termination of the mother's parental rights was in the child's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.