

IN THE COURT OF APPEALS OF IOWA

No. 7-041 / 06-2056
Filed February 14, 2007

**IN THE INTEREST OF I.C., a/k/a I.C.-H.,
Minor Child,**

**S.E.H., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father appeals from a juvenile court order terminating his parental rights to one child. **AFFIRMED.**

Douglas E. Johnston, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee.

Mark J. Neary of Neary Law Office, Muscatine, for intervenors-paternal grandparents.

Neva Rettig Baker of Baker Law Office, Muscatine, for intervenors-custodians.

Roland Caldwell, Muscatine, for mother.

Arlen L. Poock, Muscatine, guardian ad litem for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Shawn is the father, and Jessica the mother, of Isiaah (sometimes referred to in the record as “Isiah”), born in August 2005. Shawn appeals from a December 2006 juvenile court order terminating his parental rights to Isiaah. The order also terminated Jessica’s parental rights, and she has not appealed. We affirm.

Isiaah was born ten weeks prematurely, and has a history of apnea, respiratory distress, hyperbilirubinemia, and suspected sepsis. When he was discharged from the University of Iowa Hospitals and Clinics about six weeks after his birth he went to live with Jessica’s cousin and his wife, with whom he has thereafter at all times resided.

Isiaah was adjudicated a child in need of assistance (CINA) mid January 2006 pursuant to Iowa Code sections 232.2(6)(c)(2) (failure of parents to supervise) and 232.2(6)(n) (parent’s mental capacity results in inadequate care) (2005). The basis for the adjudication was “the parents’ failure and inability to provide reasonable care to the child due to the parents’ limited mental capacity or condition.” The juvenile court removed Isiaah from any custody of Jessica and Shawn and placed him in the legal and physical custody of Jessica’s cousin and the cousin’s wife, subject to supervision of the Iowa Department of Human Services. The State later filed a petition for termination of parental rights. Following hearing the juvenile court terminated Shawn’s parental rights pursuant to Iowa Code section 232.116(1)(h). Shawn appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of

the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Shawn claims the State did not prove the section 232.116(1)(h) requirements for termination. That section requires proof that the child is three or younger, has been adjudicated a CINA, has been removed from the child's parents at least six of the last twelve months, and the child cannot be returned to the custody of the parents as provided in section 232.102. The first three elements were clearly proved. Shawn argues only that mental disability alone is not a sufficient reason for termination.

The juvenile court found that Shawn is mentally limited, suffers from asthma and receives SSI, lives with his mother, and "has a limited ability to care for himself let alone a child." It found he lacked practical parenting skills and adequate decision-making abilities, and was unable to provide supervision appropriate to Isiaah's needs. The court found that services, including parenting skills and supervised visits, have been provided to the parents since Isiaah's release from the hospital; despite the services Isiaah could not be returned home because the limitations of his parents made it impossible for either to be his caretakers as neither was capable of providing appropriate care for him; and if placed with his parents Isiaah would be subject to a failure to provide appropriate supervision and to neglect.

Mental disability alone is not a sufficient reason for termination. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). However, it does not constitute a defense against termination. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). It is a proper

factor to consider, and when it contributes to a person's inability to parent it may determine whether termination is required in the child's best interest. *K.F.*, 437 N.W.2d at 560.

We fully agree with and adopt as our own the juvenile court's amply supported findings concerning Shawn's mental disability and resulting lack of ability to adequately and properly parent Isiaah. We conclude, as the juvenile court did, that Isiaah cannot be returned to Shawn without being subject to neglect that would cause him to remain a CINA. Our conclusion, like that of the juvenile court, is not based on Shawn's mental disability alone, but instead is based on a finding that his mental disability prevents him from performing essential parenting functions. We affirm the juvenile court's determination that the State proved by clear and convincing evidence the section 232.116(1)(h) grounds for termination of Shawn's parental rights.

Shawn also claims termination of his parental rights is not in Isiaah's best interest. He cites section 232.116(3)(a), which provides that the court need not terminate parental rights if it finds that a relative has custody of the child. Isiaah is in the custody of relatives, Jessica's cousin and his wife. At the termination hearing Shawn and his parents, who had intervened, requested that instead of Shawn's parental rights being terminated a guardianship be established with Jessica's cousin and his wife appointed as Isiaah's guardians.

The factors in section 232.116(3) are permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993); *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990). It is within the juvenile court's sound discretion based upon the unique circumstances of the case before it and the best interests of the

child whether to apply a factor in section 232.116(3). *J.V.*, 464 N.W.2d at 890. We must consider a child's long-range best interests as well as immediate best interests. *In re A.B.*, 492 N.W.2d 446, 450 (Iowa Ct. App. 1992).

At the time of the termination hearing Isiaah was just over one year old. He had lived with Jessica's cousin and his wife since discharge from the hospital, almost one year, and had been in their legal custody for most of that year. The juvenile court found, in part:

[Isiaah] is developing normally for his corrected age. [Jessica's cousin and his wife] have provided a loving home and have met all of the child's medical needs. Isiaah is thriving in their care.

. . .

[N]either parent will be able within a reasonable period of time to care for [Isiaah]. . . . Isiaah has become integrated into the home of [Jessica's cousin and his wife]. They are the only parents he has known. [They] wish to adopt Isiaah. Although he is placed with a relative the child deserves the permanency that an adoption can give him. They can provide the safety, stability and permanent loving home that is in the child's best interest.

Upon our de novo review we fully agree with these findings and the juvenile court's conclusion that long-term relative placement or guardianship is not in Isiaah's best interest. We conclude the court did not abuse its discretion by not applying 232.116(3)(a) to save the parent-child relationship. We affirm on this issue as well.

AFFIRMED.