

**IN THE COURT OF APPEALS OF IOWA**

No. 7-976 / 07-1899  
Filed January 16, 2008

**IN THE INTEREST OF C.E., A.E., C.E., JR., and C.W.,  
Minor Children,**

**L.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Story County, Victor G. Lathrop,  
Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental  
rights to four children. **AFFIRMED.**

Shannon Leighty, Assistant Public Defender, Nevada, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Stephen Holmes, County Attorney, and Cynthia McIntosh,  
Assistant County Attorney, for appellee.

Lauren Jacobson, Ames, for father.

Timothy Gartin, Ames, guardian ad litem for minor children.

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

**MILLER, J.**

Laricia appeals from an October 2007 juvenile court order terminating her parental rights to Chrishon, Carlos, Jr., Ariel, and Chadiamon<sup>1</sup> (“the children”), who were nine, eight, seven, and six years of age respectively at the time of an August 2007 termination of parental rights hearing. The order also terminated the parental rights of certain fathers and putative fathers, and they have not appealed. We affirm.

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).

The juvenile court terminated Laricia’s parental rights to each child pursuant to Iowa Code section 232.116(1)(f) (2007) (child four or older, adjudicated a child in need of assistance (CINA), removed from physical custody of parents twelve of last eighteen months, cannot be returned to parents without being a CINA). Laricia does not claim the State did not prove this statutory ground for termination. She claims the juvenile court erred in terminating her parental rights, as termination is not in the children’s best interest.

Even if statutory requirements for termination are met, the decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Laricia’s claims of juvenile court error in part implicate portions of Iowa Code section 232.116(3). The provisions of that section are permissive,

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<sup>1</sup> Chadiamon is also referred to at places in the record as “Chadiamond.”

not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). It is within the sound discretion of the juvenile court, based on the unique circumstances before it and the best interests of the child, whether to apply section 232.116(3). *Id.*

Laricia claims termination is not in the children's best interest, because the children are currently in the process of being placed with aunts. She cites Iowa Code section 232.116(3)(a), which provides that the court need not terminate the parent-child relationship if a relative has legal custody of the child. However, no relative had legal custody of any of the children at or preceding the time of the termination hearing.

At the time of the termination hearing the Iowa Department of Human Services (DHS) was exploring the possibility of placing the two older children with one of Laricia's sisters or step-sisters and the two younger children with another sister or step-sister, and home studies had been conducted. However, both homes presented concerns and potential problems and it was far from certain that either placement would ever come to pass. The juvenile court noted its "serious doubts about those [potential] placements," and stated its belief that ongoing gains in the children's behaviors and medical issues "would soon become lost in the controlled chaos of these respective placements,"<sup>2</sup> views with which we fully agree. We conclude, as the juvenile court did, that potential but uncertain future placements with relatives do not weigh in favor of exercising discretion to avoid otherwise appropriate termination of Laricia's parental rights.

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<sup>2</sup> The first sister, twenty-six years of age, had four boys, ranging from ten years of age to a one-year-old infant. The second sister, twenty-eight years of age, has never been married and had three daughters and one son, ranging from thirteen to six years of age. The home studies identified significant questions and concerns about each home.

Laricia claims termination is not in the children's best interest due to the closeness of the relationship between her and the children. She cites Iowa Code section 232.116(3)(c), which provides that the court need not terminate the parent-child relationship if termination would be detrimental to the child due to the closeness of that relationship. As the State notes, Laricia's claim is based largely if not solely on evidence that the children call her "mom" and give her hugs and kisses. Laricia was in jail from September 2003 to December 2003. She was then "out" for about four months. In the forty months from April 2004 to the termination hearing Laricia spent a total of thirty-six months in a residential correctional facility, on the run (for a month or less), in jail, out-of-state without the children (for two months), and in prison, and was available to provide care for the children a total of only four months.

The juvenile court found the facts would lead it to conclude Laricia does not have a close relationship or strong bond with her children, a conclusion with which we agree. It found there was no evidence that termination would be detrimental to the children. Although termination will no doubt cause the children some sadness and sense of loss, we otherwise agree with the juvenile court that termination will cause no substantial detriment to them. We agree with it that section 232.116(3)(c) also does not weigh in favor of exercising discretion to avoid otherwise appropriate termination of Laricia's parental rights.

Laricia also makes a general claim that termination is not in the children's best interest. We disagree.

The children have been in the care of a relative,<sup>3</sup> a family friend, or foster parents for all but eight months of the almost four years since September 2003. All of the children have emotional and/or behavioral problems. All, with the exception of Chadiamon as to whom Laricia refuses to approve the use of recommended medication for attention deficit/hyperactivity disorder, are receiving appropriate attention and care for their problems. All are doing relatively well as a result of the structure and consistency being provided by their respective foster parents. Three of the four homes, Ariel's being the exception, are probable permanent homes, with two of the three families hoping and intending to adopt.

At the time of the termination hearing Laricia had just started serving a term of no more than five years on a conviction for a class "D" felony, her second felony conviction. Her tentative discharge date was one year and ten months away, and her earliest, hoped-for appearance before the parole board was about six months in the future. Based on Laricia's performance during the children's lifetimes, with emphasis on the most recent four years, it appears questionable whether Laricia will ever be both able and committed to providing an appropriate home and care for the children.

We conclude that termination is in the children's best interest, in order to allow them the very real opportunity for the safe, stable, secure, and permanent families and homes that they have not had but do need and deserve. We therefore affirm the juvenile court's decision to terminate Laricia's parental rights.

**AFFIRMED.**

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<sup>3</sup> The relative is a sister of Laricia other than the two she now holds out as possible placements.