

IN THE COURT OF APPEALS OF IOWA

No. 8-391 / 08-0667
Filed June 25, 2008

IN THE INTEREST OF R.L.H., Minor Child,

C.M.Z., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

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

Matthew R. Metzgar of Rinehart Law, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee.

Timothy Scherle of Bikakis, Mayne, Arneson, Karpuk & Hindman, Sioux City, for father.

Lesley Rynell, Juvenile Law Center, Sioux City, guardian ad litem for minor child.

Heard by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

MILLER, P.J.

Chastity appeals from an April 2008 juvenile court order terminating her parental rights to Royn, born in July 2005, pursuant to Iowa Code sections 232.116(1)(d), (e), and (h) (2007).¹ She claims that termination of her parental rights is not in Royn's best interest. 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).

Royn and two older siblings, born in mid-2001 and mid-2002, were removed from Chastity in August 2006. The removal was occasioned by several months of concerns about neglect of the children and violence between Chastity and her boyfriend and the boyfriend's twelve-year-old son. Royn, then thirteen months of age, was far under normal weight, could not take solid food, could not sit up, and could not lift his head. He was clearly severely developmentally delayed and was described as being a failure to thrive child.

Royn was placed in the legal custody of the Iowa Department of Human Services (DHS) and in foster care. He has thereafter remained in DHS custody, placed with the same foster mother. Within a week of placement in his foster home Royn gained weight and his development began to improve substantially.

¹ The order also terminated the parental rights of Royn's putative father and any unknown biological father, on the ground of abandonment, and no such father appeals.

Royn is a special needs child. He has various medical and developmental problems that may well result in an eventual need for institutionalization in a residential care facility. Some of his problems may be life threatening. Throughout the underlying child in need of assistance (CINA) proceeding Chastity has been provided with numerous services. She nevertheless is far from understanding Royn's conditions and needs. Chastity is admittedly unable to have Royn returned home, much less provide for his serious special needs, either now or in the future.

During the underlying CINA proceeding Chastity became pregnant with another child, and gave birth to a son late June 2007. Royn's two older siblings were returned to Chastity in July 2007. Despite lengthy and ongoing services, serious concerns remain regarding Chastity's ability to provide structure and discipline for Royn's three siblings and to meet their physical, emotional, and developmental needs.

Chastity does not claim that Royn can be returned to her, now or in the future. She asserts, however, that termination of her parental rights is not in Royn's best interest, arguing that he has a bond with her and his two older siblings and he should be placed in a residential care facility for developmentally disabled children where she and his siblings could maintain contact and she could make decisions concerning him.

Royn's foster mother is meeting all of his normal and special needs. She has become trained and knowledgeable concerning Royn's special needs and the medications, equipment, and procedures necessary to deal with those needs. Royn is closely attached to her. The DHS and service providers all recommend

that Royn continue in his placement in his current foster home, and recommend against placing him in a residential care facility unless and until it should eventually become necessary. Royn's foster mother is prepared to and intends to adopt him if he is freed for adoption by termination of Chastity's parental rights.

The juvenile court concluded, in part:

This court concludes that the only permanency option available that would be in Royn's best interests is adoption by his current foster family, who has met all of his emotional and physical needs. Institutionalization is not a permanency option. Royn is thriving in his current foster home and perhaps, may not develop mentally or physically beyond his current level of functioning. But, he should be given the chance to try. Chastity has failed to make appropriate decisions and choices regarding Royn up to the time of his removal. This court is not convinced that she would now be able to make appropriate decisions and choices regarding his future.

Royn deserves the opportunity to establish permanency and stability in his life. It is in Royn's best interests that the impediments to his forming new family relationships should be swept away.

We agree with these conclusions and adopt them.

Chastity's argument is based in part on the bond between Royn and her and his two older siblings. This implicates Iowa Code section 232.116(3)(c), which provides that the court need not terminate the parent-child relationship if it finds by clear and convincing evidence that the termination would be detrimental to the child because of the closeness of the parent-child relationship. However, a strong parent-child relationship is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Section 232.116(3) is permissive, 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 upon the unique circumstances before it and the best interests of the child, whether to apply this section. *Id.*

Upon our de novo review we agree with the juvenile court that termination of Chastity's parental rights is in Royn's best interest and conclude the court did not abuse its discretion by not giving greater weight to any remaining bond between Royn and Chastity and Royn's two older siblings.

AFFIRMED.