

IN THE COURT OF APPEALS OF IOWA

No. 8-643 / 08-1120
Filed September 17, 2008

IN THE INTEREST OF A.G., Minor Child,

S.P., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Victoria L. Meade, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee.

Nancy Pietz, Des Moines, for father.

M. Kathryn Miller, Juvenile Public Defender, guardian ad litem for minor child.

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

EISENHAUER, J.

A mother appeals the termination of her parental rights to her child. She does not dispute the grounds for termination were proved, but contends termination is not in the child's best interest. We review her claim de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother essentially argues the child should have been placed in the care of a relative in lieu of termination. The maternal grandmother lives in Colorado and is caring for four of the mother's other children. The mother has recently moved to Colorado. The paternal grandmother previously had custody of the child; however, he was removed because the grandmother could not handle him.

Iowa Code section 232.116(3)(a) (2007) states that the court need not terminate parental rights if the child is in the legal custody of a relative. However, section 232.116(3)(a) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The juvenile court has the discretion to apply this section, and not terminate parental rights based on the circumstances before it and the best interests of the children. *Id.*

The district court found placement of the child with either grandmother was not in the child's best interest because of concerns the mother would continue to be a disruptive element in the child's life. It found:

[A.G] has already spent several months of his early life with his [paternal] grandmother She is now facing personal challenges in her own life. This judge does not doubt, though, that she is willing to make a long term commitment to [A.G.] However the historical evidence demonstrates that at [A.G]'s very young age, the family connection could introduce significant and long-term instability into his life. Though [the mother] states that things will be different, because she will absent herself from the

state, she is not credible and that representation cannot be the basis to place [A.G]. [The mother]’s past actions, supported by her remarks throughout [A.G]’s CINA case, indicate that she has never given up her plan to regain custody of her first four children. This judge believes, based on everything, especially her unresolved mental health issues, that sometime she will return. Unfortunately, that is unlikely to be a thoughtful return based on [A.G]’s best interests, but that she will make his interests subordinate to her own. It is so sad for this young man that there have been several missed opportunities for him to be raised by family or kin. A situation in which he could be protected and his mother could have played a noncustodial role in his life while he grew up. Instead, [the mother] not only could not support those placements—even though at the time they were temporary—but actively undermined them.

The record supports this finding. We conclude termination is in the child’s best interest and, accordingly, affirm.

AFFIRMED.