

**IN THE COURT OF APPEALS OF IOWA**

No. 8-740 / 08-1165  
Filed October 1, 2008

**IN THE INTEREST OF P.L.F.,  
Minor Child,**

**C.F., Mother,**  
Appellant,

**B.A., Father,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Brian Michaelson, Associate Juvenile Judge.

A mother and father appeal separately from the part of the termination order transferring guardianship and custody of the child. **AFFIRMED.**

Suzan Boden of Vriezelaar, Tigges, Edgington, Bottaro, Boden & Ross, L.L.P., Sioux City, for appellant mother.

David Gill of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, for appellant father.

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

Stephanie Forker Parry of Forker & Parry, Sioux City, for minor child.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

**DOYLE, J.**

A mother and father appeal separately from the part of the termination order transferring guardianship and custody of the child to the Iowa Department of Human Services (Department) rather than to their chosen adoptive family or that family's attorney for purposes of effectuating a private adoption. They contend the juvenile court erred because it was in the child's best interests that the child be placed in the same extended adopted family as their other child. Additionally, they contend the juvenile court's failure to order that their child to be placed in the same extended adopted family as their other child violated their substantive due process rights. Upon our review, we affirm the decision of the juvenile court.

***I. Background Facts and Proceedings.***

B.A. and C.F. are the parents of P.L.F., born in December 2007. Both parents are dependent adults who have been diagnosed with mental retardation. In July 2007 they had their parental rights terminated with respect to their other child, W.F.<sup>1</sup> W.F. was subsequently adopted by J.H. and T.H., who live about twenty-five miles away from the parents and allow the parents contact with W.F. approximately once a month.

Prior to P.L.F.'s birth, the parents decided that they would try to retain custody of P.L.F. after P.L.F.'s birth. They further decided that if they could not retain custody of P.L.F., they would put P.L.F. up for private adoption. Because they decided to try to retain custody of P.L.F., the parents took no further steps at that time towards private adoption.

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<sup>1</sup> This appeal concerns only the parents' rights with respect to P.L.F.

After P.L.F.'s birth, P.L.F. came to the attention of the Department due to concerns regarding the parents' ability to care for the child. A child protective services worker interviewed the father to discuss the Department's concerns. The father expressed to the worker that he and the mother wanted to retain custody of P.L.F., but that if the child were taken into protective custody by the Department, they preferred that the child be placed with W.F.'s adoptive parents, J.H. and T.H., to keep the children together.

Shortly thereafter, the worker contacted J.H. to see if J.H. and T.H. would agree to placement of P.L.F. in their home in the event that P.L.F. was taken into custody. J.H. indicated that although they would like P.L.F. to be placed with them, they were no longer licensed foster parents because they had let their license lapse. The worker then contacted Iowa KidsNet for the name of other foster parents available to take P.L.F. at that time.

On December 13, 2007, the Department applied to the juvenile court for P.L.F.'s temporary removal pursuant to Iowa Code section 232.78 (2007), based upon concerns for P.L.F.'s care and the established mental capacities of P.L.F.'s parents. The court found removal was necessary to avoid imminent danger to the child's health or life and ordered that P.L.F. be removed from P.L.F.'s parents' custody. P.L.F. was then placed with M.C. and D.C., a foster-to-adopt family licensed by the State of Iowa. The next day, the Department filed a petition alleging P.L.F. to be a child in need of assistance (CINA).

After P.L.F.'s removal, the parents contacted J.H., and J.H. indicated that she and her husband would be interested in privately adopting P.L.F. J.H. then contacted an attorney to initiate the adoption, and the attorney advised J.H. that

an updated home study would be needed to proceed further with the private adoption. Additionally, the attorney discussed the situation with Woodbury Assistant County Attorney Cindy Weber Blair. At that time, Weber Blair indicated that she believed the county attorney's office and the Department would be agreeable to the parents' plan.

Thereafter, J.H. and T.H. received their updated home study, which did not allow for the adoption of another child. The parents then selected C.C., J.H.'s first cousin, and C.C.'s spouse, J.C., to privately adopt P.L.F. C.C. and J.C. indicated that they would facilitate and encourage contact and communication between P.L.F. and W.F., even though they are residents of Nebraska and live approximately ninety miles from J.H. and T.H. Following a home study, C.C. and J.C. were approved and recommended as potential adoptive parents.

Although P.L.F. was still subject to CINA proceedings under chapter 232, P.L.F.'s parents executed releases of custody with the intention of commencing a chapter 600A voluntary termination of parental rights proceeding, and C.C. and J.C.'s attorney filed a petition under chapter 600A for the termination of P.L.F.'s parents' parental rights. The attorney proposed to all parties, including the Department, that custody be transferred to the attorney as a suitable person. To that end, on February 19, 2008, the father filed an application to change custody to the attorney in the chapter 232 proceedings. Essentially, the parents sought that the Department dismiss the chapter 232 proceedings so that they could proceed with private adoption under chapter 600A. However, the Department did not consent to the parents' private adoption plan. Additionally, although the

assistant county attorney and the child's guardian ad litem had initially consented to the private adoption plan, they withdrew their consent when it became known that W.F.'s adoptive family was not able to adopt P.L.F.

Ultimately, in the 600A proceeding, the court dismissed the petition for termination of parental rights, vacated the parents' releases of custody, and left custody of P.L.F. with the Department for continued placement in foster care pending further CINA hearings. The court concluded that pursuant to Iowa Code section 600A.5(1) and (2), the termination proceedings were required to be conducted pursuant to the provisions of chapter 232, division IV because the court had previously made an order pertaining to a minor child under chapter 232, division III and that order was still in force.

On April 17, 2008, following a hearing in the chapter 232 CINA proceedings on March 19, 2008, the juvenile court entered an order with respect to adjudication, disposition, and permanency.<sup>2</sup> The order adjudicated P.L.F. as a CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n). Regarding disposition, the court ordered that P.L.F.'s custody remain with the Department for continued placement in family foster care and denied the father's application to change custody to C.C. and J.C.'s attorney for purposes of effectuating the private adoption. The court determined that the language of chapter 232 prohibited court action under chapter 600A after the initiation of chapter 232 proceedings. The court further found that the parents' substantive due process rights were not violated because there was no legal action taken by the parents

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<sup>2</sup> The parents filed an application for interlocutory appeal of the district court's April 17, 2008 order. The Iowa Supreme Court denied the application.

to initiate a private adoption prior to the initiation of removal by the State. Additionally, the court concluded that aggravated circumstances existed to waive the requirement for making reasonable efforts, and directed, as to permanency, that the county attorney's office initiate proceedings to terminate the parent-child relationship between P.L.F. and P.L.F.'s parents.

On May 5, 2008, the State filed a petition to terminate the parents' parental rights to P.L.F. A combined permanency review hearing and termination of parental rights hearing was held in June 2008. There, the parents asserted that there was insufficient evidence to terminate their parental rights. Alternatively, the parents requested that, in the event the court determined their parental rights should be terminated, the court enter a dispositional order transferring guardianship and custody of P.L.F. to C.C. and J.C. or their attorney for the purposes of accomplishing the adoptive placement and for the purposes of the attorney's preparation of a case permanency plan under Iowa Code section 232.117(6). The parents' request was based upon their reasons set out at the March 19, 2008 adjudication, disposition, and permanency hearing. On July 1, 2008, the court entered its order terminating the parents' parental rights under sections 232.116(1)(d), (e), (g), and (h), and denying the parents' request that guardianship and custody be transferred. The order provided that custody and guardianship of P.L.F. was to be transferred to the Department for adoptive placement.

## ***II. Scope and Standards of Review.***

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). We review both the facts and the law and adjudicate

rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). We are primarily concerned with the child's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). When we consider the child's best interests, we look to the child's long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

### ***III. Discussion.***

The parents appeal from the part of the termination order transferring guardianship and custody of the child to the Department rather than to their chosen adoptive family or that family's attorney for purposes of effectuating a private adoption. The State maintains that because the parents do not challenge the part of the juvenile court's order terminating their parental rights, the parents no longer have any right to challenge P.L.F.'s placement with the foster family instead of their chosen adoptive family. We disagree.

While it is true that the parents do not appeal the termination of their parental rights, prior to the court's termination of their parental rights, they requested at the termination hearing that P.L.F.'s custody be transferred to C.C. and J.C.'s attorney to effectuate a private adoption, which they asserted was in the best interests of P.L.F. and within their rights as P.L.F.'s parents. The juvenile court denied their request and then terminated their parental rights. Consequently, we find the parents, as interested parties aggrieved by the juvenile court's order, have standing to raise their arguments on appeal. See Iowa Code § 232.133(1).

**A. Best Interests.**

The parents first contend that the juvenile court erred because it was in the child's best interests that the child be placed in the same extended adopted family as their other child. The State maintains that although this would be good for the parents, this is not necessarily in P.L.F.'s best interests. We agree.

The foster parents have provided P.L.F. with a loving and dependable home, and P.L.F. has formed a bond with the foster parents. Moreover, P.L.F. and W.F. have never even seen each other, much less formed any type of bond. Due to the distance between C.C.'s family and J.H.'s family, P.L.F. and W.F. will not likely have a sibling relationship. Although the record indicates that both P.L.F.'s foster parents and C.C. and J.C. would make great parents, the benefit of keeping P.L.F. with foster parents with which the child had already bonded outweighs any benefit of moving P.L.F. to a new family where no bond has been formed. Consequently, we conclude the juvenile court did not err in finding that the best interests of P.L.F. was that the child be placed in the Department's custody to continue the child's placement with the foster family.

**B. Substantive Due Process.**

Additionally, the parents contend the juvenile court's failure to order that their child be placed in the same extended adopted family as their other child violated their substantive due process rights. We disagree.

"A parent's interest in maintaining family integrity is best protected by the Due Process Clause." *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994) (citation omitted). For that reason, "state intervention to terminate the relationship between [a parent] and [a] child must be accomplished by procedures meeting



the requisites of the Due Process Clause.” *In re D.J.R.*, 454 N.W.2d 838, 844 (Iowa 1990) (citations omitted). But unlike procedural due process, “substantive due process is reserved for the most egregious governmental . . . abuses that ‘shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity.’” *In re K.M.*, 653 N.W.2d 602, 607 (Iowa 2002) (citation omitted). Consequently, “the substantive dimension of due process dictates that where a fundamental right is involved, regulations limiting the right may be justified only by a compelling state interest, and must be narrowly drawn to express only the legitimate state interest at stake.” *In re D.J.R.*, 454 N.W.2d at 844 (citations omitted).

“[A]lthough ‘there exists a parental interest in the integrity of the family unit[,] . . . this interest is not absolute, but rather may be forfeited by certain parental conduct.’” *In re K.M.*, 653 N.W.2d at 608 (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)). Consequently, when parents are unable to properly care for their children, “the State has an obligation to intercede and provide the necessary care.” *Id.* (citations omitted). Furthermore, our supreme court has held that “the State’s interest in providing a permanent home to children in these situations and protecting them from harm are compelling governmental interests.” *Id.* (citations omitted). Moreover, “[i]n considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child’s safety, *to the best placement for furthering the long-term nurturing and growth of the child*, and to the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116 (emphasis added).

Here, the State followed the statutory procedures set forth in chapter 232 in removing P.L.F. and engaging in the CINA proceedings. Furthermore, the parents took no actions toward a private adoption prior to the State's initiation of CINA proceedings. Nevertheless, the State agreed to the parents' initial plan of placing P.L.F. with W.F. and his adoptive parents. Once that was no longer a viable option, the State determined it was not in P.L.F.'s best interests to be transferred to another family, given the fact that W.F. and P.L.F. would not be in the same immediate family and live as siblings; in fact, W.F. and P.L.F. would not even be near each other, and would not likely see each other regularly except for a few visitations throughout the year. The State found that the foster-to-adopt parents were also good parents, and that P.L.F. and the foster parents had begun forming a bond. Furthermore, the State and the juvenile court both properly considered P.L.F.'s best interests in denying the parents' request to place P.L.F. with C.C. and J.C. The denial of the parents' request based upon the child's best interests was not an egregious governmental abuse that shocks the conscience or otherwise offends judicial notions of fairness and that is offensive to human dignity. Consequently, we find no substantive due process violation.

#### ***IV. Conclusion.***

Because we conclude that the juvenile court did not err in finding that the best interests of P.L.F. was that the child be placed in the Department's custody to continue the child's placement with the foster family, and we find no substantive due process violation, we affirm the decision of the juvenile court.

**AFFIRMED.**