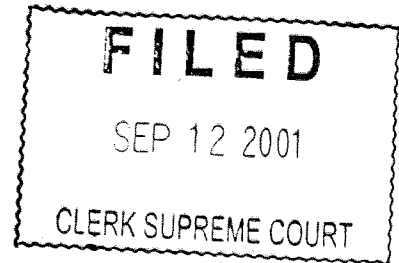


IN THE COURT OF APPEALS OF IOWA

No. 1-591 / 01-0588
Filed September 12, 2001



IN THE INTEREST OF C.B., Minor Child,
J.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe Smith, District Associate Judge.

The mother of minor child, C.B., appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Tiffany J. Koenig and Christopher Kragne, Sr., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, John P. Sarcone, County Attorney, and Mark Taylor and Jennifer Navis, Assistant County Attorneys, for appellee State.

Marla Suddreth, Altoona, guardian ad litem for minor child.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The mother of minor child, Chase, appeals a juvenile court order terminating her parental rights. The mother contends it is in the child's best interest he remain in his grandparents' care and she be allowed visitation. In particular, the mother argues the juvenile court abused its discretion by not utilizing the exception to termination under Iowa Code section 232.116(3)(a). We affirm.

Background Facts and Proceedings. Jennifer is the mother of Chase, born June 24, 1998. Jennifer started using alcohol at age thirteen or fourteen and began using crack at age seventeen. She became addicted to crank at age eighteen. Before Chase's birth, she was unsuccessfully discharged from the Iowa Residential Treatment Center at Mt. Pleasant in November 1997. She later left Powell Chemical Dependency Center against medical advice. Jennifer was convicted of possession of methamphetamine and given a suspended sentence. However, she continued her drug usage upon Chase's birth.

The history of child protective concerns dates back to August of 1998. The department of human services received calls from various informants regarding the mother/child situation but Chase was not removed until January 2000 when Chase and Jennifer both tested positive for cocaine. The mother consented to Chase's removal and he was placed in foster care on January 25, 2000. Chase was subsequently adjudicated to be a child in need of assistance and placed in the custody of his maternal grandmother.

Following removal, Jennifer entered Gordon Recovery Center for substance abuse treatment but was unsuccessfully discharged from the program on April 11, 2000. Jennifer's progress in treatment was minimal throughout. Gordon's program recommended unsuccessful discharge due to Jennifer's pattern of noncompliance, which resulted in her lack of participation and cooperation with the program. Gordon's program also reported Jennifer exhibited poor parenting skills while in the program:

The patient has left her son in bed and left the unit for [sic] outside appointment without notifying any responsible party that she was doing so. The patient stole a prepared bottle from one of the other peers and gave it to her son rather than make one of her own for him. When patient's son had a very sore and runny nose, staff informed the patient how to take care his nose, but instead the patient ungently wiped his nose with the course [sic] paper towel.

Jennifer was then arrested and placed in the violator's program at Mitchellville, where she was unsuccessfully discharged on November 2, 2000. Counselors reported she "had a difficult time following any rule or directive." While she participated in the violator's program, Jennifer received four major reports based on failure to follow directives, false statements, and obstructive conduct. At the time of her discharge, she was just four days from completion of the violator's program. Her unsuccessful discharge was considered to be a parole violation, and Jennifer is serving an indeterminate ten-year sentence with no definite release date.

Except for the short period of time he was with his mother at the Gordon's program from February 29, to April 11, 2000, Chase has been with his maternal grandmother since February 3, 2000.

In December 2000, the State filed a petition to terminate Jennifer's parental rights. Hearing was commenced on February 5, 2001, and parental rights were terminated pursuant to Iowa Code sections 232.116(1)(c) and 232.116(1)(g) (1999). Jennifer appeals.

Standard of Review. Termination proceedings are reviewed de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although they do not bind us, we give weight to the juvenile court's findings of fact, especially when considering credibility of witnesses. *Id.* The primary interest in termination proceedings is the best interests of the child. *Id.* The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96.

Termination of Parental Rights. The court terminated Jennifer's rights pursuant to Iowa Code sections 232.116(1)(c) and 232.116(1)(g). The actual grounds for the termination of Jennifer's parental rights under these sections are not being contested or appealed. Jennifer concedes the grounds for termination have been met.

Rather, Jennifer contends the juvenile court erred in failing to consider the exception to termination as set forth in Iowa Code section 232.116(3)(a). The relevant portion of this section states:

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
 - (a) A relative has legal custody of the child.

Iowa Code § 232.116(3)(a). A termination, otherwise warranted, may be avoided under this exception. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991).

The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). The words "need not terminate" are clearly permissive. *Id.* The court has discretion, based on the unique circumstances of each case and the best interest of the child, whether to apply the factors in this section to save the parent-child relationship. *Id.*

The record does reveal the maternal grandmother is furnishing a safe and stable environment for Chase. While a case can be made to apply the section 232.116(3)(a) exception, this is not the issue before us. Instead, the issue on this appeal is whether the juvenile court abused its discretion by not utilizing this exception. An abuse of discretion is shown when a court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Hightower*, 587 N.W.2d 611, 612 (Iowa Ct. App. 1998).

We agree with the juvenile court that Chase's best interests are served by termination of Jennifer's parental rights. The juvenile court properly exercised its discretion to terminate Jennifer's parental rights in this case not only because of her proven inability to put her child's interests ahead of her own, but also because of her inability to provide a stable home environment for Chase.

Chase has waited for more than a year for his mother to provide the safe and stable home he needs and deserves. Given his age and need for permanency and the mother's failure to utilize the services that would have fostered reunification, it is in Chase's best interests parental rights be terminated.

Based upon a careful review of this case, we conclude Jennifer's parental rights should be terminated and we decline to apply the exception. Thus, we affirm the juvenile court's order.

AFFIRMED.