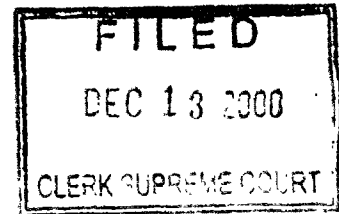


IN THE COURT OF APPEALS OF IOWA

No. 0-680 / 00-980
Filed December 13, 2000



IN THE INTEREST OF R.S., M.G.,
and J.G., Minor Children,

C.M.S., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

A mother appeals the decision of the juvenile court which terminated her
parental rights to her three minor children. **AFFIRMED.**

Charles P. Pritchard, Jr. of the Nading Law Firm, Ankeny, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and John Anderson, Assistant County Attorney, for appellee State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, guardian ad
litem for minor children.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

PER CURIAM

A mother appeals the decision of the juvenile court which terminated her parental rights to her three children. She claims termination of her parental rights was not in the children's best interests. We affirm on appeal.

Chastity is the mother of Ryan, born in February 1992; Marlon, born in July 1995; and Jesse, born in November 1996. Ryan P. is the father of Ryan. Marlon G. is the father of Marlon and Jesse.

Chastity and the children came to the attention of the Department of Human Services (DHS) in July 1998, after Chastity left the children with an acquaintance while she went to a bar to drink. When Chastity had not returned three hours later, this person called the police. Chastity was arrested for public intoxication. The children were removed from her care and placed in foster care. DHS issued a founded report of denial of critical care due to this incident.

In August 1998, the children were placed in the home of the maternal grandmother. They were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2). In October 1998, Ryan was placed in the care of his father, and Marlon and Jesse were placed in the care of the paternal grandmother.

Chastity has a history of alcohol and substance abuse. She completed a residential treatment program in November 1998, but by January 1999 was again using marijuana and alcohol. She completed another residential treatment program in March 1999, but was unsuccessfully discharged from a half-way house for noncompliance with rules. Chastity participated in a psychosocial

evaluation. The evaluation showed she had dysthymia (depression) and a mixed personality disorder, as well as polysubstance dependence.

Chastity was required to provide two clean drug tests before she could begin visitation with the children. She sometimes attempted unapproved contact with the children. Chastity made regular telephone calls to the children and their caregivers. She commenced visitation in June 1999. The children displayed emotional difficulties after these visits. Ryan became moody and prone to outbursts. Ryan began individual therapy to help him deal with the angry feelings he had for Chastity. Marlon and Jesse also had problems, becoming agitated and hyperactive after visits.

The State filed a petition in August 1999 to terminate the parental rights of Chastity and Marlon G. Chastity had another relapse into drug and alcohol use in September 1999, and returned to residential treatment. Her visitation was terminated in order to allow her to focus on substance abuse recovery. At the recommendation of Ryan's therapist, Ryan had no further visits with his mother. Chastity resumed visitation with Marlon and Jesse in January 2000.

The termination hearing was held in March 2000. The juvenile court terminated Chastity's parental rights under sections 232.116(1)(c), (e), (g), and (k). The court found continued contact with Chastity was not in the children's best interests. The parental rights of Marlon G. were also terminated. Chastity appeals.

The scope of review in termination cases is *de novo*. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App.

1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Chastity does not contest the statutory grounds for termination of her parental rights. She asserts the juvenile court should have exercised its discretion under section 232.116(3)(a) to refuse to terminate her parental rights because the children are in the care of relatives. Ryan is in the care of his father and Marlon and Jesse are in the care of the paternal grandmother. Under section 232.116(3)(a), the court need not terminate the relationship between a parent and child if the court finds a relative has legal custody of the child.

Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the children, whether to apply this section. *J.L.W.*, 570 N.W.2d at 781. We must consider a child's long-range and immediate best interests. *In re A.B.*, 492 N.W.2d 446, 450 (Iowa App. 1992).

It is in the children's best interests to terminate Chastity's parental rights. In the present case there were concerns Chastity would harass the children and their caregivers through repeated custody hearings. There were also concerns Chastity would not abide with boundaries regarding contact with her children. She told social workers she expected to have daily contact with the children once the juvenile court case was closed. At the termination hearing, Chastity testified she would leave the children in their present home and only seek visitation with them. The juvenile court found this statement was not credible, based on her previous statements.

The juvenile court found continued contact with Chastity was not in the children's best interests. Chastity had very little visitation with the children throughout the case, due to her substance abuse problems. When she did participate in visitation, it resulted in emotional difficulties for the children. Based on all of these factors, we affirm the decision of the juvenile court terminating Chastity's parental rights.

AFFIRMED.