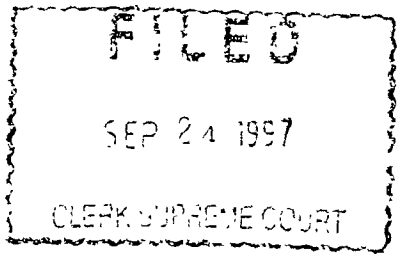
IN THE COURT OF APPEALS OF IOWA

000145



No. 7-495 / 97-0211
Filed September 24, 1997

IN THE INTEREST OF L.H., C.H., D.H., AND J.H.,
Minor Children,

L.H., C.H., D.H. and J.H.,
Appellants.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

Guardian ad litem of minor children appeals the dismissal of a petition to terminate parental rights. **AFFIRMED.**

Faye Jenkins of the Youth Law Center, Des Moines, guardian ad litem for appellants.

Martha L. Johnson, Des Moines, for appellee-mother.

Considered by Cady, Huitink, and Habhab*, JJ.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, J.

The guardian ad litem appeals the decision of the juvenile court dismissing a petition to terminate the parental rights of a mother and the fathers of four minor children. We affirm.

Julie is the mother of Jerome, born on August 9, 1985; Destiney, born on July 3, 1986; Corey, born on May 8, 1988; and LaRoy, born on August 24, 1989. James is the father of Jerome and Destiney. Ed is believed to be the father of Corey. Eason is the father of LaRoy.

The family became involved with the Department of Human Services (DHS) in 1993, when LaRoy, who was then living with an aunt, was exposed to cocaine. LaRoy was adjudicated a child in need of assistance on May 12, 1993. The juvenile court placed LaRoy in the custody of Julie, under the supervision of DHS. Julie and LaRoy were required to have periodic drug screens.

On September 2, 1994, Corey and LaRoy were removed from Julie's care because they tested positive for the presence of cocaine. They were placed in foster care. Corey was adjudicated a child in need of assistance on October 31, 1994. Julie was to have supervised visitation after she provided two clean drug screens.

On November 23, 1994, Jerome and Destiney were removed from Julie's care due to concerns they too would be exposed to illegal drugs. These two children were placed in a separate foster home. Jerome and Destiney were adjudicated to be

children in need of assistance on January 24, 1995. Julie was ordered to complete chemical dependency treatment.

Corey was admitted to a children's psychiatric facility in January 1995 because of his aggressive behavior. He was released in April 1995, and was placed in a foster home. In September 1995, Corey was placed in a psychiatric medical institution for children because of his violent behavior. Corey has been diagnosed with a conduct disorder and post-traumatic stress disorder. He has continued to remain in treatment.

Jerome, Destiney and LaRoy have been in several foster homes. Destiney was sexually abused while in one of the foster homes. Julie did not submit drug screens, and did not have visitation through DHS. Julie was able, however, to have frequent, informal contact with the children due to the cooperation of the foster parents.

In December 1995, Jerome was placed in a youth shelter because he had been running from the foster home. Jerome ran away from the shelter several times and went to Julie's home. Jerome has been diagnosed with post-traumatic stress disorder.

On May 14, 1996, the juvenile court entered a no-contact order preventing Julie from having contact with the children. Julie continued to see the children. She entered substance abuse treatment in July 1996, but was discharged for non-compliance. In August 1996, Jerome, Destiney, and LaRoy were placed together in a foster home in a different county. This was done to prevent Julie from contacting the children.

On August 21, 1996, the State filed a petition to terminate the parental rights of Julie, James, Ed, and Eason. At the termination hearing, Julie testified she had a job and was living in an apartment. She stated she would need about six months before she would able to care for the children. Julie admitted she had not complied with the case permanency plan, but stated she had no reason to do so while she was in continuous contact with the children. She testified that after the children were moved to a different county she began to make progress toward reunification. Julie's mother, Margaret, testified she would be willing to care for all four children.

The juvenile court determined there was sufficient evidence to terminate the parental rights of James and Ed pursuant to Iowa Code section 232.116(1)(b), and to terminate the parental rights of all of the parents pursuant to section 232.116(1)(e). The court concluded, however, termination was not in the best interests of the children. The court found the children were very attached and loyal to their mother, and it was unlikely they would be able to establish a similar bond with another caregiver. The court determined Julie and Eason should have supervised visitation.

The guardian ad litem has appealed the juvenile court's decision not to terminate the parental rights of Julie, James, and Ed. The court's decision in regard to Eason has not been appealed. The State has taken the position of the guardian ad litem, but was granted permission by the supreme court to withdraw from the appeal.

The scope of review in termination cases is de novo. *In re S.N.,* 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.,* 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the child. *In re A.B.,* 554 N.W.2d 291, 293 (Iowa App. 1996).

The guardian ad litem contends the juvenile court improperly allowed Julie's maternal bond with the children to override the children's best interests. The guardian ad litem believes termination would actually be in the children's best interests because Julie has not yet addressed her substance abuse problems. The guardian ad litem asserts the children should be given a chance to be adopted into a drug-free home that can provide them with safety and stability.

Section 232.116(3) provides, in relevant part:

> The court need not terminate the relationship between the parent and child if the court finds any of the following:
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> * * *
>
> c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.
>
> d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for 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 child, whether to apply this section. *In re J.V.,* 464 N.W.2d 887, 890 (Iowa App. 1990). Section 232.116(3) was intended to allow the juvenile court to give the parent another try at correcting the situation which led to the removal of his or her children. *In re A.L.,* 492 N.W.2d 198, 202 (Iowa App. 1992).

We agree with the decision of the juvenile court that it would not be in the children's best interests to terminate parental rights in this case. It is likely Corey would remain at the psychiatric medical institute for children for some time, whether or not his parental rights were terminated. Under section 232.116(3)(d), the juvenile court acted within its discretion by not terminating the parental rights of Julie and Ed to Corey.

The other children had continuing contact with their mother and remained bonded to her. The children had very little stability while in foster care, but had been moved from home to home. The children are African-American, and there were few African-American homes interested in accepting all of the children. The juvenile court found the adoptability of the children to be negligible at best, given their special needs, their ages, and loyal bond to each other and their mother. The children are old enough that they are able to contact the mother on their own, and they have shown a continued interest in maintaining a relationship with her.

In addition, Margaret testified she would be willing to care for all four of the children. Further time is needed to explore this option for the children.

We affirm the decision of the juvenile court dismissing the petition to terminate parental rights.

AFFIRMED.