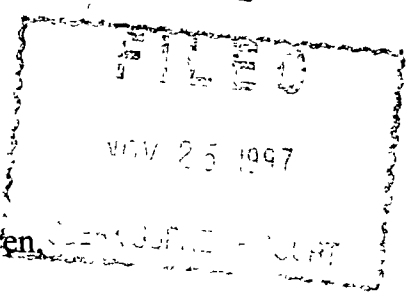
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IN THE COURT OF APPEALS OF IOWA

No. 7-645 / 97-1291

IN THE INTEREST OF K.M.Z., P.T.Z., and M.R., Minor Children,

C.L., Mother of **M.R.**,
Appellant.

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

The natural mother of M.R. appeals a juvenile court ruling terminating her parental rights. **AFFIRMED.**

Catherine K. Levine, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, and Jaki L. Livingston, Assistant County Attorney, for appellee State.

Martha L. Johnson, Des Moines, guardian ad litem for minor child.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

A mother appeals the decision of the juvenile court terminating her parental rights to her minor son. She asserts the child should be placed in long-term foster care. We affirm the decision of the juvenile court.

Carol is the mother of Kristina, who was born in 1987; Pedro, who was born in 1988; and Michael, who was born in 1990. Jose is the father of Kristina and Pedro. The father of Michael, Michael, Sr., is on death row in Ohio for murdering a child. The present case involves only the child Michael.

The Iowa Department of Human Services (DHS) became involved with Carol in January 1995 after it received a report she and the children had moved to Iowa and were living with Jose. The relationship between Carol and Jose was beset with domestic violence. DHS issued a founded report Jose had sexually abused Kristina. There was also a founded report of denial of critical care of Kristina against Carol.

The children were removed from Carol's care on January 13, 1995, and placed in foster care. Michael was adjudicated a child in need of assistance. Carol was ordered to have psychological and parenting evaluations. The parenting evaluation revealed Carol was an ineffective parent who related to her children on a peer level. Carol has been diagnosed with generalized anxiety disorder, dependent personality disorder, and avoidant personality disorder.

In March 1995, a psychological evaluation of Michael showed he had been exposed to traumatic violence and had post-traumatic stress disorder. At times he suffered from delusions. Michael also had attention deficit hyperactivity disorder. Michael attended therapy and was placed on medication. In April 1995, he was moved to a specialized foster home to provide him with more intensive supervision and structure. Michael engaged in problematic behaviors such as tantrums, defiance, physical aggression, and bed-wetting.

Carol lived in a domestic violence shelter for a period of time. In June or July 1995, she moved to Mississippi. Carol received in-home counseling, parenting skills, and behavior management in that state. She also received individual therapy until February 1996, when she decided to quit attending. Reports showed she continued to focus on her own needs, instead of the needs of her children. After she moved, Carol talked to Michael on the telephone about once every two weeks.

In June 1996, Michael was placed in a group home due to his extreme aggression, excessive lying, and wandering from the foster home. He was placed in a psychiatric unit in August 1996. He received a new diagnosis of psychotic disorder and post-traumatic stress disorder. He continues to receive treatment for his condition. Michael is expected to remain in treatment until perhaps April 1998.

In March 1997, the State filed a petition to terminate the parental rights of Carol and Michael, Sr. to Michael. Carol testified she had a bond with Michael and

would like to resume care of him when he was released. The juvenile court terminated the parental rights of Carol and Michael, Sr. to Michael under Iowa Code section 232.116(1)(e).[1] Carol has appealed the termination of her parental rights to Michael.

I. 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).

II. Carol contends the juvenile court should not have terminated her parental rights to Michael. She believes the court should have refused termination based on section 232.116(3)(d), which provides:

> 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
>
> * * *
>
> *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.

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[1] Carol and Jose's parental rights to Kristina and Pedro were also terminated. Carol did not contest the termination as to these children and does not appeal. Neither Jose nor Michael, Sr. has appealed the termination of their parental rights.

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. *See In re J.V.*, 464 N.W.2d 887, 890 (Iowa App. 1990). 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).

We find no abuse of discretion in the juvenile court decision to refuse to apply section 232.116(3)(d). DHS expected to place Michael in a foster home on his discharge. Michael could be adopted by a family which had proper training. He will need consistent psychiatric assistance and a highly-structured environment. There is no evidence Carol would be able to meet Michael's special needs. Continuation of the parent-child relationship would prevent Michael from being placed in a permanent family.

III. Carol asserts the juvenile court should have placed Michael in long-term foster care because his prognosis is uncertain. She also states she has a strong bond with Michael. Carol would like to resume care of Michael once he is discharged from treatment.

Long-term foster care under a permanency order is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). A permanency

order should be entered only when it is in the child's best interests. *In re L.M.F.*, 490 N.W.2d 66, 67-68 (Iowa App. 1992).

We determine it is in Michael's best interests to terminate Carol's parental rights. Michael suffers from post-traumatic stress disorder due to the violence he witnessed in his mother's home. When he is released from treatment he will need consistency and a highly-structured environment, which Carol is not able to provide. Carol has not addressed her own psychological problems, her dependence on abusive men, or her unstable lifestyle. Additionally, Michael feels abandoned by Carol. Since she moved from Iowa she has had few visits with him.

We affirm the decision of the juvenile court terminating Carol's parental rights to Michael.

AFFIRMED.

Mahan, J., concurs; Sackett, J., specially concurs without opinion.