IN THE COURT OF APPEALS OF IOWA

No. 0-202 / 99-1866
Filed May 31, 2000

FILED
MAY 31 2000
CLERK SUPREME COURT

IN THE INTEREST OF
C.D., P.E. and S.B.,
Minor Children,

B.E., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Juvenile Judge.

Mother appeals the termination of her parental rights to her three children. She contends the court erred in failing to find that termination would be detrimental to the children due to the closeness of the parent-child relationship. **AFFIRMED.**

Neill A. Kroeger, Davenport, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

R. Douglas Wells, guardian ad litem for minor children.

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

MILLER, J.

Appellant/Mother Bridgett appeals the termination of her parental rights to her three children, contending the juvenile court erred in not applying Iowa Code section 232.116(3)(c). We affirm.

Appellate review of proceeding to terminate a parent-child relationship is de novo; thus it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, whom that court heard and observed firsthand, but we are not bound by those findings. *Id.* Central to a determination of this nature are the best interests of the child. *Id.*

Bridgett does not contend the court erred in finding the State had proven by clear and convincing evidence the statutory grounds for termination.[1] After the court determines all of the criteria have been established by clear and convincing evidence, it must still determine whether termination would be in the child's best interest. *See* Iowa Code §§ 232.116(2), (3) (1999); *In re T.R.*, 483 N.W.2d 334, 337 (Iowa App. 1992). There is a rebuttable presumption the best interests of the child are served by custody of the natural parents. Iowa Code § 232.1 (1999); *see also Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599, 606 (1982). The State, as *parens patriae*, has the duty to assure every child within its borders receives proper care and treatment, and must intercede when parents abdicate that responsibility. *In re Dameron*,

[1] Bridgett's parental rights were terminated under Iowa Code sections 232.116(1)(c), (d) and (e) as to two of her children, and Iowa Code section 232.116(1)(g) as to her third child.

306 N.W.2d at 745. Bridgett contends the juvenile court erred in determining termination was in the children's best interests, because the termination would be detrimental to the children due to the close parent-child bond.

A strong bond between parent and child is a special circumstance which mitigates against termination when the statutory grounds have been satisfied. Iowa Code § 232.116(3)(c) (1999); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). Yet it is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d at 341. Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). 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. *Id.* Because application of the Code section is discretionary, Iowa Code section 232.116(3) does not require the juvenile court make specific findings to this section. *In re M.K.*, 460 N.W.2d 191, 193 (Iowa App. 1990).

The parent-child relationship between Bridgett and the older two of the three children was terminated pursuant to Iowa Code section 232.116(1)(d), which requires the juvenile court to find clear and convincing evidence the parent has not maintained "meaningful and significant" contact with her children, as defined by that subsection, for a period of six consecutive months prior to the termination hearing, and the parent has made no reasonable efforts to resume care of the children. Iowa Code § 232.116(1)(d)(3) (1999). Bridgett does not contend on appeal termination pursuant to section 232.116(1)(d) is in error. When a parent has not maintained significant and meaningful contacts with the children, considerations under section 232.116(3)(c) do not apply. *In re A.J.*, 553

N.W.2d 909, 916 (Iowa App. 1996). We therefore affirm the termination order with regard to these two children.

The parent-child relationship between Bridgett and her third child, Steven, was terminated pursuant to Iowa Code section 232.116(1)(g) only. Steven was born in March 1998. For the first eight months of her pregnancy with Steven, Bridgett did not receive any pre-natal care, and denied the pregnancy when directly asked by DHS workers. Shortly after his birth, it was determined he had cocaine in his system. As a result, a petition asking the court to adjudicate Steven a child in need of assistance (CINA) was filed about ten days after his birth. A shelter hearing held the same day placed Steven in foster care, where he has remained since. Steven was adjudicated CINA, as defined in Iowa Code sections 232.2(6)(c)(2), (n), and (o), on May 27, 1998. The dispositional order of July 20, 1998, placed Steven in the custody of his paternal grandmother.[2] Initially, Bridgett was allowed one weekly two-hour visit with Steven and was able to respond to his needs appropriately. It appears that due to Bridgett's progress Steven was later spending unsupervised weekends with Bridgett and Steven's dad, and one additional unsupervised visit during the week. However, visitation was once again reduced to two supervised visitations per week when Steven was only seven months old, due to extreme physical violence witnessed by the children between Bridgett and Steven's father. Steven has not been in Bridgett's custody since he was one week old.

Bridgett's brief does not direct us to any evidence of a close bond between her and her one-year-old child, and we cannot find any on our de novo review. In

[2] Steven's father is not the father of Bridgett's two older children.

fact, between the two court hearings on the State's petition to terminate her parental rights, Bridgett cancelled a visit with Steven. The service workers involved with this case have noted Steven is doing extremely well in the care of his paternal grandmother. They further concur Bridgett is unable to provide a loving, stable environment for Steven.

The DHS provided Bridgett with parenting education relating to Steven's needs, specifically including developmental stages, nutrition, safety and medical issues. However, Bridgett has been unable to put into practice what she was taught. During supervised visitations with Steven at his grandmother's home, Steven's dad would take him into the bedroom while Bridgett stayed in the living area with her other two children. Once Steven became active and able to crawl, DHS workers informed Bridgett how important it was to constantly supervise his activities. Nonetheless, Bridgett would frequently not know Steven had crawled out of the room until the worker supervising the visit would tell her.

It appears Bridgett is only minimally bonded with Steven, if they are bonded at all. On our de novo review, we conclude there is no close bond between Bridgett and Steven. Therefore the trial court did not err by not applying the provisions of Iowa Code section 232.116(3)(c).

AFFIRMED.