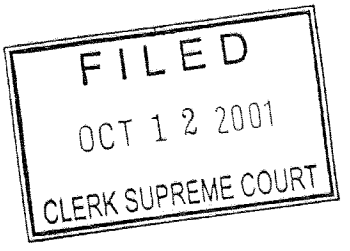
IN THE COURT OF APPEALS OF IOWA

No. 1-410 / 01-0462
Filed October 12, 2001



IN THE INTEREST OF
Z.C., Minor Child,

H.C., Mother,
Appellant.

Appeal from the Iowa District Court for Des Moines County, Mark Kruse, District Associate Judge.

Mother appeals from the termination of her parental rights to her son. **AFFIRMED.**

Andrew S. Hoth of the Hoth Law Offices, Burlington, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, Leslie C. Ayers, Student Legal Intern, and Ty Rogers, Assistant County Attorney, for appellee-State.

Alan Waples of Wittkamp & Waples, Burlington, guardian ad litem for minor child.

Heard by Huitink, P.J., and Miller and Hecht, JJ.

HECHT, J.

Mother appeals the juvenile court's order terminating her parental rights. The mother contends the juvenile court erred in finding clear and convincing evidence to terminate her parental rights under Iowa Code section 232.116(1)(g) (1999). We affirm.

I. Factual Background and Proceedings. Heather and Leslie are the biological parents of Zachary, born on October 13, 1998. At the time of his birth, Zachary was diagnosed with a congenital chromosomal abnormality which produces two potentially life-threatening diseases: adrenal insufficiency and Duchenne's-type muscular dystrophy. Zachary's adrenal insufficiency requires him to take two medications several times a day. In addition, Zachary receives daily physical therapy. Zachary has not manifested signs of Duchenne's-type muscular dystrophy due to his young age; however, the disease is a progressive muscle disorder which results in death in the second or third decade of life.

Heather is developmentally challenged and has tested in the mildly retarded range. She has a history of mental illness, and her most recent evaluation revealed an assessment of major depression with psychosis. Leslie was in prison when Zachary was born for statutory sexual seduction. His parental rights are not at issue in this appeal.

The Department of Human Services (DHS) first became involved with the family on October 18, 1999, through a referral from the Burlington Medical Center regarding allegations of Zachary's malnourishment and weight loss. Zachary had been previously hospitalized for weight loss, although he was able to gain weight

whenever under medical supervision. Several service providers commented on Heather's inability to properly feed or care for Zachary. Heather later testified she was feeding her son only twice a day. Moreover, one service provider came to the home to find Zachary had been left unsupervised. When confronted, Heather admitted to leaving him alone on other occasions. Home caring services discontinued on November 10, 1999, due to Heather's non-cooperation and failure to make scheduled appointments.

On October 18, 1999, an ex parte order was entered for removal of Zachary from Heather's custody and placement into foster care due to denial of critical care and lack of adequate nutrition. Zachary was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) on March 8, 2000. A permanency hearing was held on October 5, 2000, and the dispositional order was continued without modification.

In order to preserve and reunify the family, DHS provided various services including training on parenting skills, cooking skills, proper hygiene, proper stimulation for Zachary, and physical therapy. Despite these efforts, service providers found Heather unable to focus on Zachary during visitations for more than fifteen to thirty minutes at a time. She showed a tendency to leave the room or direct her attention away from Zachary during these visits. Furthermore, Heather was unable to properly feed Zachary or perform his physical therapy. A petition to terminate Heather's and Leslie's rights was filed on November 21, 2000, and a hearing was held on February 2, 2001. Heather appeals from the order terminating her parental rights.

II. Standard of Review. The standard of review in termination cases is de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Our primary concern is the best interest of the child; we look to both the child's long-range and immediate interests. *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000).

III. Discussion. Heather challenges the juvenile court's findings as to the last requirement under Iowa Code section 232.116(1)(g), that there be "clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time." Iowa Code § 232.116(1)(g)(4). The requirement under subsection (4) is met when it is shown by clear and convincing evidence that the child cannot be returned to the parent because the child remains in need of assistance as defined by section 232.2(6). *In re E.B.L.*, 501 N.W.2d 547, 550 (Iowa 1993); *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995); *see also In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). Moreover, Heather contends the juvenile court should have issued an order pursuant to Iowa Code sections 232.117(4) and 232.102(2)(b), providing her six months to demonstrate she could successfully parent Zachary.

Based on our de novo review of the record, we agree with the juvenile court's determinations. We find clear and convincing evidence several of the factors enumerated under section 232.2(6) are present demonstrating Zachary remains a child in need of assistance and thus custody cannot be given to Heather at the present time.

Several primary service providers testified to Heather's inability to provide appropriate care and supervision of Zachary, specifically noting Heather's lack of attention span and limited mental capacity. *See* Iowa Code § 232.2(6)(c)(2). Even after receiving training and services from DHS, Heather is able to concentrate for only thirty minutes at a time, well below the necessary full-time supervision Zachary requires. Service providers also testified Heather would leave the room during visits or simply focus her attention on the television. In addition, Heather has trouble properly feeding Zachary and general problems with her overall parenting skills.

Zachary is a special-needs child with serious medical problems. His physical well-being requires constant attention and care, including daily medication and physical therapy. *See* Iowa Code § 232.2(6)(e). Service providers testified Heather was unable to perform Zachary's physical therapy, which must be done several times daily. When given a video to watch explaining how to perform the therapy, she failed to watch it. Zachary's doctor testified when given the appropriate care and nutrition, Zachary has thrived. When in Heather's care, Zachary has been admitted to the hospital for malnutrition as he was being fed an eight ounce bottle twice a day.

Based on the evidence in the record, we agree with service providers that Heather cannot provide the reasonable care and supervision necessary for Zachary's well being and is unable to provide appropriate assistance for her son's medical conditions. For the reasons set forth above, we find the State met its burden of proof under Iowa Code section 232.116(1)(g)(4) by proving by clear and convincing evidence Zachary could not be placed in his mother's custody at the time of the termination hearing. Accordingly, we affirm the order terminating the parent-child relationship between Heather and Zachary.

AFFIRMED.