IN THE COURT OF APPEALS OF IOWA

No. 1998-10 (8-678) / 98-1098

IN THE INTEREST OF A.H., Minor Child,

R.R., Mother,
Appellant,

R.H., Father,
Appellant.

FILED
JAN 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Carol J. Greta, Alternate District Associate Judge.

The mother and father of a minor child appeal a district court order terminating their parental rights. **AFFIRMED.**

Richard R. Hollis, Des Moines, for appellant mother.

John E. Billingsley of Walker, Knopf & Billingsley, Newton, for appellant father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Scott Nicholson, Assistant County Attorney, for appellee State.

Kelli J.A. Olson, Des Moines, guardian ad litem for Minor child.

Heard by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

MAHAN, J.

Rhonda R. and Ronald H., parents of seven-year-old Anna H., appeal a district court order terminating their parental rights. We affirm.

Rhonda and Ronald married while Rhonda was in high school. Their child, Anna, was born on September 6, 1991, when Rhonda was fifteen or sixteen. Rhonda subsequently dropped out of school to care for Anna.

Anna apparently came to the attention of DHS after being diagnosed with failure to thrive when she was about eight months old. At that time, Rhonda and Ronald began receiving services including family preservation, in-home counseling, homemaker health-aide visits, and parent skill development.

When Anna was ten months old, she was removed from the home after Ronald slapped her in the face and Rhonda did nothing to protect Anna from Ronald's physical abuse. Rhonda and Ronald stipulated Anna was a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). Anna was adjudicated to be a child in need of assistance on August 21, 1992, and placed in foster care.

Anna remained in foster care for the next twenty-four months. During that time, Rhonda and Ronald divorced. Rhonda married Tom R., with whom she now has two sons, Thomas and Jonathan. Anna was returned to Rhonda, and Rhonda received homemaker health-aide visits and in-home counseling twice a week.

Anna was removed from Rhonda and Tom's home in February 1996 after a founded incident of child abuse was reported. It was also discovered Anna was suffering from malnutrition. At that time, Anna was placed with her paternal aunt and

uncle, Connie and Pete H. Rhonda continued to receive in-home counseling and also received parent nurturing classes. Anna began receiving individual counseling.

Rhonda had unsupervised visits with Anna until it was reported Tom was abusing one or both of the boys. Thereafter, Rhonda's visits with Anna were supervised. Thomas and Jonathan were adjudicated children in need of assistance in January 1998. Anna's counselor testified Anna expresses concern for the safety of her brothers and has stated Rhonda beats her.

Rhonda has cooperated with DHS. However, Tom apparently has not been cooperative. Additionally, the State remains concerned about Rhonda's parenting skills, her failure to protect her children from her husbands, her denial any abuse has ever taken place, and her failure to take responsibility for the lack of supervision and safety of her children.

Anna has not lived with Ronald since she was ten months old, although Ronald has been allowed unsupervised visitation. Ronald received in-home counseling, individual counseling, anger management training, and adult services. Ronald reportedly has been successful in anger management and can maintain employment. However, Ronald has continuing mental health issues and receives SSI disability due to an unspecified mental illness.

Although Anna and Ronald's relationship is good, Anna's counselor testified Anna sees Ronald as more of a friend than a parent and Anna is controlling of Ronald. Anna had not been returned to Ronald because he had been living with his mother in a home unsuitable for Anna. Ronald has been living independently since

October 1997. The State is concerned Ronald is unable to parent Anna on a full-time basis and it would take six to nine months of preparation to determine if Ronald could become able to parent Anna.

Anna's behavioral problems, such as tantrums and lying, have reportedly improved since she was placed with Connie and Pete. Anna has apparently developed a bond with Connie, and Anna's counselor testified it was a tremendous stress on Anna to have her placement up in the air.

The State petitioned for termination of parental rights because of the length of time Anna had been placed outside her parent's homes and because Connie and Pete were willing and able to adopt Anna. The district court found grounds for termination existed under both Iowa Code sections 232.116(1)(c) and 232.116(1)(e) and entered an order terminating Rhonda and Ronald's parental rights.

I. STANDARD OF REVIEW. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

II. IOWA CODE CHAPTER 232. Rhonda argues the district court violated her Fifth and Fourteenth Amendment rights by applying the provisions of Iowa Code sections 232.116(c) and 232.116(e). She states, "Clearly, the plain language of

Section 600A.3 . . . demonstrates the Legislature's clear intent that the grounds for termination listed in Section 600A.8 be the *only* grounds for termination under Iowa law." We disagree.

Iowa Code section 232.109 states provisions of chapter 232 control proceedings to terminate parental rights with respect to children for whom a CINA adjudication is currently in force. It is undisputed Anna continued to be a child in need of assistance at the time the termination petition was filed. Clearly, chapter 232 governs the proceedings in the case at bar. We find Rhonda's other constitutional arguments are also without merit.

III. TERMINATION OF RHONDA'S PARENTAL RIGHTS. Rhonda contends the district court erred in finding Anna could not be returned to Rhonda and Tom's home. Rhonda argues her parental rights should not be terminated because (1) there have been no allegations Rhonda has physically abused Anna, (2) the district court should have believed Tom's testimony regarding the alleged incident of abuse in the McDonald's parking lot, and (3) the State failed to show reasonable services were offered to preserve the family unit.

A. Grounds for Termination Under Iowa Code Section 232.116(1)(c). Parental rights may be terminated if:

> [T]he court finds that both of the following have occurred:
>
> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts *or omissions* of one or both parents, ...

> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstances which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(c) (emphasis added). Rhonda's parental rights may be terminated even if she is not the perpetrator of the abuse; it is irrelevant there are no allegations Rhonda has physically abused Anna. The previous CINA adjudication was based on Rhonda's omissions and her failure to act to protect Anna from physical abuse perpetrated by her husband.

Rhonda contends the district court should have believed Tom's account of the McDonald's incident rather than that of the State's witness. The district court observed the testimony first-hand and is in a better position to evaluate the credibility of witnesses than we are. *See* Iowa R. App. P. 14(f)(7); *In re M.M.S.*, 502 N.W.2d at 5. After review of the record, we see no reason not to give weight to the district court's findings with regard to the McDonald's incident.

Rhonda asserts reasonable services were not offered. However, the record shows Rhonda received a number of services from DHS since Anna was adjudicated a child in need of assistance in 1992. Finally, the testimony shows Tom has not cooperated with DHS and, although Rhonda has cooperated, it appears she will continue to choose her husband over protecting Anna from abuse. This is exactly the problem which led to the 1992 CINA adjudication.

We agree with the district court grounds for termination of Rhonda's parental rights exist under Iowa Code section 232.116(1)(c).

B. Grounds for Termination Under Iowa Code Section 232.116(1)(e). The first three elements of Iowa Code section 232.116(1)(e) exist. Anna is now seven years old, she has been adjudicated a child in need of assistance, and at the time of the trial, Anna had been removed from Rhonda's physical custody for approximately twenty-seven consecutive months. Therefore, Rhonda's parental rights may be terminated if the district court finds "[t]here is clear and convincing evidence that at the present time the child cannot be returned to the custody of the parents as provided in section 232.102." Iowa Code § 232.116(1)(e)(4).

Custody of a child should remain with the child's parents unless there is clear and convincing evidence:

> a. The child cannot be protected from physical abuse without transfer of custody; or
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> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

Iowa Code § 232.102(5). As discussed above, the record shows the circumstance which led to Anna's original adjudication as a child in need of assistance continues to exist. Connie and Pete provide an adequate placement for Anna. There is clear and convincing evidence Anna cannot be returned to Rhonda and Tom's home.

We agree with the district court grounds for termination of Rhonda's parental rights exist under Iowa Code section 232.116(1)(e).

IV. TERMINATION OF RONALD'S PARENTAL RIGHTS. These same reasons apply equally to Ronald. Ronald has also received a number of services from DHS. However, the testimony shows Anna cannot be returned to Ronald because he

still lacks adequate skills to parent Anna on a full-time basis. Furthermore, it would take six to nine months of services to prepare Ronald for Anna's return. Even then, there would be no assurance Ronald would be able to adequately care for Anna. Therefore, we agree with the district court grounds for termination of Ronald's parental rights exist under Iowa Code sections 232.116(1)(c) and 232.116(1)(e).

V. PERMANENCY. Both Rhonda and Ronald argue termination of their parental rights is unnecessary to achieve permanency for Anna. It is true the court need not terminate parental rights when the child is placed in the legal custody of a relative or the termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code §§ 232.116(3)(a), 232.116(3)(c). 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 court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). Generally, once the grounds for termination of parental rights have been shown, termination is in the best interests of the child. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa App. 1992).

Instead of terminating Rhonda's and Ronald's parental rights, the court could order long-term placement of Anna with Connie and Pete if convincing evidence exists showing:

> a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

Iowa Code § 232.104(3). As discussed above, we find subsections (b) and (c) are satisfied. Rhonda and Ronald each received a number of services from DHS following the 1992 CINA adjudication, and Anna, at the time of trial, could not be returned to either Rhonda's or Ronald's homes. However, Rhonda and Ronald maintain convincing evidence shows termination of their parental rights would not be in Anna's best interest. We disagree.

Rhonda contends it is in Anna's best interest not to be deprived of the fellowship of her half-brothers or the opportunity to develop a mother-daughter bond with Rhonda. Ronald contends he and Anna have a close parent-child relationship and it would not be in Anna's best interest to terminate it. The testimony, however, shows Rhonda has failed to establish a good parent-child relationship with Anna. Anna had to be reminded to call Rhonda "mom" and continued to express fear of Rhonda. The testimony does show Ronald and Anna have a good relationship, but Anna considers Ronald more of a friend than a parent.

Anna is seven years old and has been removed from Rhonda's and Ronald's custody for most of her life. Anna had been removed from Rhonda's custody for a total of more than four years at the time of trial. Anna has not lived with Ronald since August 1992. On the other hand, Anna had lived with Connie and Pete for approximately twenty-seven consecutive months at the time of trial. While we recognize the importance of sibling relationships, the testimony shows Connie and

Anna have bonded. Furthermore, the testimony shows Anna needs stability to continue her progress, which had been impeded by the stress caused by the prospect of being removed from Connie and Pete's home. Therefore, we find it is in Anna's best interest to terminate the parental rights of Rhonda and Ronald.

For these reasons, we affirm the district court order terminating Rhonda's and Ronald's parental rights.

AFFIRMED.