

IN THE COURT OF APPEALS OF IOWA

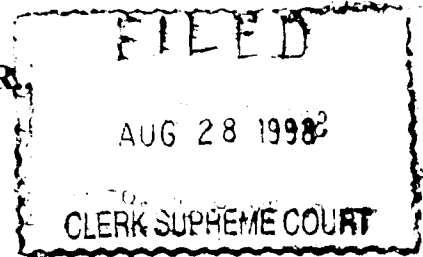
No. 8-229 / 97-1503

IN THE MATTER OF THE GUARDIANSHIP OF A.M.R.,

A Minor,

M.R. and K.R., Maternal Grandparents,

Appellants.



Appeal from the Iowa District Court for Hancock County, Jon Stuart Scoles,
Judge.

The grandparents of A.M.R. appeal a district court order terminating their
guardianship over the minor child. **AFFIRMED.**

Steven R. Bakke of Bakke Law Office, Forest City, for appellants.

T.R.-M, Minneapolis, pro se appellee mother.

Considered by Cady, C.J., and Vogel, and Mahan, JJ.

PER CURIAM

This is an appeal by guardians who challenge the district court decision terminating their guardianship over their grandson and returning the child to his mother. We affirm.

Tiffany and Kris are the parents of Adam, who was born in August 1991. They were high school students at the time of the birth. Tiffany and Adam lived with Tiffany's parents, Mark and Kathleen, until the fall of 1992.

In December 1994, Tiffany was hospitalized for depression and a thyroid condition. She agreed to place Adam in the guardianship of Mark and Kathleen. In 1995, Tiffany moved to Minnesota to live with Darrell. They live in a duplex in a high-crime area of Minneapolis. Tiffany and Darrell married in April 1996. Tiffany is presently employed as a paralegal. Darrell is a retired police officer.

In November 1996, Tiffany filed a petition to terminate the guardianship. She asserted she was now able to care for Adam. Tiffany submitted reports from a psychologist and a medical doctor showing her depression was in remission. The guardians resisted the termination of the guardianship. A psychologist, Dr. Rosemary Linderman, performed a study of each home, and recommended Adam remain in the care of the guardians.

The district court entered a decision on August 25, 1997, terminating the guardianship. The court determined the guardians failed to overcome the preference

The district court entered a decision on August 25, 1997, terminating the guardianship. The court determined the guardians failed to overcome the preference of parental custody. The court ordered Adam to be returned to the custody of his mother, Tiffany. Mark and Kathleen appealed.

In proceedings involving termination of a guardianship, our review is de novo. *In re Guardianship of D.D.H.*, 538 N.W.2d 881, 883 (Iowa App. 1995).

Under Iowa Code section 633.559, the parents of a minor child, if qualified and suitable, are preferred over all others for appointment as a guardian. *In re Guardianship of Stodden*, 569 N.W.2d 621, 623 (Iowa App. 1997). The law raises a strong presumption a child's welfare will be best served in the care and control of parents. *Id.* (Citing *Zvorak v. Beireis*, 519 N.W.2d 87, 89 (Iowa 1994)).

The presumptive preference for parental custody, however, is rebuttable. *In re Guardianship of Knell*, 537 N.W.2d 778, 781 (Iowa 1995). The burden of proof rests with the party seeking to rebut the preference. *Stodden*, 569 N.W.2d at 623. A nonparent guardian must prove the parent seeking custody is not suitable to have custody. *In re Marriage of Halvorsen*, 521 N.W.2d 725, 729 (Iowa 1994). Also, a guardianship should not be terminated if return of custody to the parent is likely to have a seriously disrupting and disturbing effect upon the child's development. *Painter v. Bannister*, 258 Iowa 1390, 1396, 140 N.W.2d 152, 156 (1966).

We agree with the district court's conclusion the guardians did not meet their heavy burden to rebut the preference for parental custody. They did not present

has full-time employment as a paralegal. Although she lives in a high-crime area, there was evidence Darrell, who had a police background, was able to appropriately secure their home. Additionally, there was no evidence to show returning Adam to Tiffany's care would have a seriously disrupting and disturbing effect upon his development. This is an important fact which helps distinguish this case from *Stodden*, 569 N.W.2d at 624-25 where the record revealed the child's well-being and development would be seriously impacted if returned to his mother. In making our decision, we also note Dr. Linderman's recommendation did not take into account the preference for parental custody.

We deny Tiffany's request for \$1000 as reimbursement for her time to prepare her brief. Costs of this appeal are assessed to the guardians, Mark and Kathleen.

We affirm the decision of the district court terminating the guardianship. We determine Adam should be placed in the custody of Tiffany.

AFFIRMED.

Cady, C.J., and Vogel, J. concur; Mahan, J., specially concurs.

MAHAN, J. (specially concurring)

I concur specially. I share the concern of the grandparents for the well-being of Adam. However, the guardianship was originally set up because of Tiffany's depression. A psychologist and medical doctor found that her depression is now in remission. Under this record, I agree with the decision of the majority.