IN THE COURT OF APPEALS OF IOWA

No. 1-411 / 01-0479
Filed September 12, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF T.L.M., Minor Child,

B.N., Father,
Appellant.

Appeal from the Iowa District Court for Lee (South) County, Gary L. Noneman, District Associate Judge.

The father of a minor child appeals from an order terminating his parental rights. **AFFIRMED.**

James F. Dennis, Keokuk, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and David Andrusyk, Assistant County Attorney, for appellee State.

Clinton R. Boddicker of Dickey, Smith, Kultala & Boddicker, Keokuk, guardian ad litem for minor child.

Kendra M. Abfalter, Keokuk, for mother.

Considered by Sackett, C.J., and Huitink and Hecht, JJ.

HUITINK, J.

Bernard, the incarcerated father of Tamara, appeals the termination of his parental rights. He claims the court erred in finding Tamara could not be returned to his care, as provided in Iowa Code section 232.116(1)(g)(4). He also claims termination is not in Tamara's best interest. We affirm.

Background facts

Tamara was born in January 1998 to Angela, a twenty-five-year-old, single, borderline retarded woman, and Bernard, a forty-seven-year-old man. Tamara and Bernard are not married. Bernard was arrested on drug charges about two weeks after Tamara's birth. Throughout the pendency of the CINA case, he was in jail or prison. At the time of the termination hearing in February 2001, Bernard's discharge date from the penitentiary was in August 2005.

Tamara was removed from Angela's care when she was about two weeks old for failure to thrive. She was adjudicated in need of assistance based on Angela's inability to provide needed care and medical care. DHS placed Tamara with her maternal great aunt and uncle, where she remained throughout the case. Angela signed a voluntary termination of her parental rights in February 1998. That same month, Bernard refused to acknowledge paternity. Paternity was established by court order in January 1999 following genetic testing.

Termination proceeding

The State filed to terminate both parents' rights in October 2000. Following a hearing in February 2001, the court terminated both parents' rights by order filed March 1, 2001. The court terminated Angela's parental rights

under Iowa Code section 232.116(1)(a). It terminated Bernard's parental rights under Iowa Code section 232.116(1)(g). The court placed Tamara in the care and guardianship of the maternal great aunt and uncle pending her adoption by them. Bernard appeals.

Claims on appeal

Bernard claims the State failed to prove Tamara could not be returned to his care, custody, and control. *See* Iowa Code § 232.116(1)(g)(4). He also claims termination of his parental rights is not in Tamara's long-term best interest.

Discussion

Our review is de novo. Iowa R. App. P. 4; *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Bernard concedes Tamara cannot be placed in his care while he is incarcerated. He only claims the court erred in "not considering his home to be his wife and children." He does not argue or cite any authority for his claim. The language of Iowa Code section 232.116(1)(g)(4) does not address returning the child to the natural parent's "home" but rather to the parent's "custody." We find Bernard's claim to be without merit and without legal basis. The court correctly terminated Bernard's parental rights under Iowa Code section 232.116(1)(g).

Bernard also argues termination is not in Tamara's best interest. We determine a child's best interest by looking at the child's long range as well as intermediate interests. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). A child should not be forced to suffer the parentless limbo of foster care endlessly. *In re*

D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Bernard's long criminal history, his cavalier attitude toward parental responsibility, his lack of any relationship with and lack of support of Tamara confirm termination is in her best interest. The only mother and father she knows are her great aunt and uncle. She needs and deserves the permanency only termination of her parents' rights will provide. Tamara should not be forced to wait another five years to see if Bernard could care for her. We affirm the court's termination of Bernard's parental rights as being in Tamara's best interest.

AFFIRMED.

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