IN THE COURT OF APPEALS OF IOWA

No. 0-524 / 00-606
Filed September 13, 2000

FILED
SEP 13 2000
CLERK SUPREME COURT

IN THE INTEREST OF P.K., JR., Minor Child,

P.K., SR., Father,
Appellant.

Appeal from the Iowa District Court for Des Moines County, Thomas Brown, District Associate Judge.

The father of minor child P.K., Jr., appeals a district court order terminating his parental rights. **AFFIRMED.**

Peter W. Hansen of Hildreth & Hansen, Burlington, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Patrick C. Jackson, for appellee State.

Margaret E. Haessler of Hoth, Ellerhoff, Haessler, Hoth & Monroe, Burlington, guardian ad litem for minor child.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

A father who has been incarcerated his son's entire life appeals the termination of his parental rights. The State was not obligated to provide the father unrequested reunification services while he was in prison. The termination was in the child's best interest. We affirm.

I. Background Facts and Proceedings.

Paul, Sr. (Paul) and Monica are the biological parents of Paul, Jr. (Junior), born November 1, 1997. Because Junior had amphetamines and methamphetamines in his system at birth, he was placed in foster care three days later. Junior has lived with the same foster care family since he was three weeks old.

Paul has been in prison during Junior's entire life. He is currently serving a seventy-month sentence for drug trafficking and hopes to be released from a federal halfway house in May 2001. Because of Paul's incarceration, he has never met his son. Paul's mother provides him with pictures and information about his child. The grandmother, who successfully petitioned to intervene in all legal proceedings relating to Junior, has also sought custody of the child.

Monica consented to the termination of her parental rights in January 2000. The juvenile court entered a decree terminating both her and Paul's parental rights in March 2000. Paul appeals, claiming the termination was not in his son's best interests and he was not offered reasonable reunification services.

II. The Merits.

We review termination proceedings de novo. *In re S.M.*, 508 N.W.2d 32, 34 (Iowa 1993). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App.1997). Our

primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App.1996).

A. Best Interests.

Paul concedes the State has proven by clear and convincing evidence grounds for terminating his parental rights.[1] He claims, however, the State has not proven the termination was in Junior's best interests. He asserts the juvenile court terminated his parental rights solely because he is in prison.

The termination of parental rights is only appropriate if it is in the affected child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In considering whether to terminate the rights of a parent, we give primary consideration to the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2) (1999); *In re M.S.*, 519 N.W.2d at 400. We also consider the best placement for furthering the long-term nurturing and growth of the child. Iowa Code § 232.116(2); *In re M.S.*, 519 N.W.2d at 400. A parent's imprisonment is relevant to these considerations. Iowa Code § 232.116(2)(a).

Paul acknowledges Junior does not know him. He also admits he has done nothing to provide or care for his son. Nonetheless, he contends he should be given a chance to establish he is a responsible parent when he is released from the federal prison system in May 2001. By that time, Junior will be over three and one-half years old. Requiring Junior to linger in temporary foster care

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[1] At the time of the termination decree, Junior had been in foster care for twenty-seven months without any trial period at home with either of his parents. He had also been adjudicated a child in need of assistance. This constitutes sufficient grounds for termination. Iowa Code § 232.116(1)(g) (1999).

until his father proves himself is not in his best interests. As we stated in a similar case:

> We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. A child should not be forced to endlessly suffer the parentless limbo of foster care. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Children simply cannot wait for responsible parenting.

In re E.K., 568 N.W.2d at 831 (affirming the termination of an imprisoned father's parental rights) (citations omitted).

Paul argues Junior would not have to wait endlessly to make the transition to life with his father because the child's grandmother could serve as an appropriate interim caretaker. Homestudy reports stated Junior could be placed in the temporary care of his grandmother. Such a placement, however, would not guarantee Paul's development into a capable parent in the near future. If Paul is unable to prove himself, his son will have forfeited time he could have spent in a more permanent home.[2] *See In re S.N.*, 500 N.W.2d. at 35 (stating if a long-term foster care plan fails, the time spent in foster care "must be subtracted from an already shortened life in a more permanent home").

Junior's grandmother has also wavered on whether she wants him. She has expressed fears regarding her financial ability to care for her grandson. She has also expressed concerns about removing her grandson from his foster family because of the potential negative impact on him. Placing Junior in his

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[2] Junior's foster family has expressed their willingness to adopt him.

grandmother's temporary care would sever the only stable, long-term familial relationships he has ever had—his relationships with his foster father, mother, and brother. *See In re A.S.T.*, 508 N.W.2d 735, 738 (Iowa App. 1993).

For these reasons, we find Junior's best interests were served by terminating his father's parental rights.

B. Reunification Services.

Paul also claims the State (particularly the Iowa Department of Human Services) failed to offer him reasonable services to reunite him with Junior. Paul, who has been incarcerated in out-of-state prisons throughout his son's lifetime, has been unavailable for many services. His incarceration is due to his own actions—he cannot fault the State for being unable to provide such services. *See In re E.K.*, 568 N.W.2d at 831. More significantly, the record does not indicate Paul requested any reunification services before his termination hearing. *See In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997) ("The State had the obligation to make reasonable efforts, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing."). The termination of his parental rights, therefore, is not precluded by the State's failure to offer him reunification services while in prison.

Paul suggests the State failed to consider his mother as an appropriate caretaker for Junior while he is unable to assume his parental duties. Paul did not provide sufficient evidence at his termination hearing establishing that this alternative would be in the child's best interests.

AFFIRMED.