IN THE COURT OF APPEALS OF IOWA

No. 1999-526 (9-783) / 99-1262
Filed March 15, 2000

IN THE INTEREST OF
T.M.M., a/k/a T.M., a/k/a T.H.,
Minor Child,

L.T.H., Father,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

Father appeals the termination of his parental rights. He contends the trial court erred in (1) concluding there was clear and convincing evidence to warrant termination, (2) denying him his due process rights by failing to order reunification and in terminating his parental rights, (3) considering acknowledged incorrect information, and (4) not balancing the best interests of the child with the interests of the natural parent. **AFFIRMED.**

Kay E. Dull, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee, State.

John C. Polifka, Juvenile Law Center, Sioux City, attorney for minor child.

Peter Boe, CASA, guardian ad litem for minor child.

Heard by Huitink, P.J., and Mahan and Miller, J.J.

MILLER, J.

Appellant Lynn appeals the termination his parental rights to his son Terard, contending the juvenile court 1) erred in concluding there is clear and convincing evidence to support the termination order; 2) violated his due process rights; and 3) erred in considering erroneous information. Lynn also contends that when the best interests of the child are balanced against the interests of the natural parent, the termination order is not appropriate. We affirm.

Terard, born January 22, 1992, is the son of Lynn and Becky, who were never married to one another. Lynn became the physical custodian of Terard when Terard was several weeks old. Becky voluntarily consented to the termination of her parental rights shortly after Terard's birth. Her rights are not at issue in this appeal.

Lynn and Terard lived with Shelley, Lynn's girlfriend, and her two children for a couple years. The Department of Human Services founded a child abuse report, listing Lynn as the perpetrator against Shelley's daughter. Lynn then took Terard with him to Texas to get away from the "looney" situation that existed within that household. Prior to the beginning of the 1997-98 school year, Lynn sent Terard back to Iowa to live with Shelley in order to begin his kindergarten classes in Iowa.

In October 1997, while Lynn was still living in Texas, Shelley's daughter was voluntarily placed in foster care due to "family conflicts." Soon, Shelley's other child was removed from her care. Terard was also. Lynn returned to Iowa on January 15, 1998, and took up residence with Shelley. Terard was adjudicated child in need of assistance (CINA) on February 23, 1998, in

Plymouth County, Iowa, pursuant to the Code of Iowa Sections 232.2(6)(c)(1) and (c)(2). The CINA adjudication was based upon Lynn's history of drug usage and his admission that although he knew Shelley still used drugs, he allowed her to supervise Terard while he was still in Texas. Terard was placed in Lynn's temporary custody pending the dispositional hearing. The court made it clear that one reason for this placement was the lack of foster homes available for Terard. The court also clearly advised Lynn that he must comply with in-home services and that Shelley was to have no supervisory responsibilities over Terard.

Two days later, pursuant to an emergency removal order, Terard was removed from Lynn's custody. The specific grounds for this action are not clear from the record. At the emergency removal hearing held on March 10, 1998, the matter was transferred to Woodbury County, Iowa. The court also ordered various services and visitation.

On May 6, 1998, a temporary removal and dispositional hearing was held in Woodbury County. The court found that Lynn had made strides in accomplishing the items in the Case Plan he needed to complete in order to be reunited with Terard. Lynn had obtained housing, full-time employment and had been participating in in-home parenting skill development. The court determined that the supervised and unsupervised visits should continue, as long as Lynn cooperated with services, with the goal of reunifying Lynn and Terard prior to the beginning of the next school year. Custody of Terard was continued with the DHS for continued placement in foster care.

At a review hearing held December 2, 1998, the court found that Terard was experiencing problems with stealing, lying and inappropriate sexual behaviors. These concerns were being addressed in therapy and progress was being made. The court also noted that Lynn's visitations with Terard had been suspended due to an unauthorized contact with Terard at school. It had been agreed that visitations would resume once Lynn had consistently met with an in-home service provider, began attending individual therapy, cooperated with UA drug screens and obtained a valid driver's license. Lynn was described as having been "quite resistive toward services" and having continued to blame the system for the removal of Terard from his care. At that time, Lynn was employed full-time and was residing with a girlfriend and her daughter.

The DHS had difficulty performing the court ordered random UA's on Lynn On one occasion, Lynn refused the test, requesting that it be rescheduled four or five days later. He became upset when his request was denied. Later, in November 1998, a UA was conducted after several attempts to locate him. It tested positive for marijuana.

The State filed its petition for termination of parental rights on February 4, 1999. In it, the State requested that the court terminate the parent-child relationship pursuant to Iowa Code Sections 232.116(1)(c), (d), and (e). Lynn had another unauthorized contact with Terard on about February 20, 1999. This resulted in an order that Lynn have no contact with Terard other than regularly scheduled therapeutic visits. In March 1999 Lynn avoided another request for a urine sample for drug testing by refusing to answer the door.

The termination hearing was held April 12, 1999, and the court entered its order terminating the parent-child relationship on July 21, 1999, on each of the three statutory grounds alleged by the State. Lynn appeals.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the facts findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but we are not bound by those findings. *Id.*

Lynn first contends that termination was not proper because there is not clear and convincing evidence Terard cannot be returned to the custody of Lynn as provided in section 232.102 of the Code of Iowa. Because this claim relates to termination only under section 232.116(1)(e), and because we find clear and convincing evidence supports termination under sections 232.116(1)(c) and (d), we do not further address this claim. *See In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996) (holding when parental rights are terminated on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm).

It is undisputed that Terard was adjudicated CINA after a finding of neglect by Lynn. It is also undisputed that Lynn was offered and received services to correct the circumstances which led to the adjudication. Lynn argues he "has turned his life around and has demonstrated his ability to parent." Our de novo review of the record convinces us, as it did the juvenile court, that despite

services being offered and received, "these services have not been productive enough to allow for Terard to be returned to the care of his father."

Throughout the almost fourteen months from the CINA adjudication to the hearing on the termination petition, Lynn was fully advised by the court and DHS exactly what the requirements were in order for him to regain custody of his son. He tested positive for marijuana use in late 1998. He has refused random UA's, even after the petition for termination was filed in early 1999. Several services were offered to both Terard and Lynn. These services included in-home services provided by both the Crittenton Center and Visinet, psychological evaluations of both Terard and Lynn, and individual therapy for both Terard and Lynn. Yet, despite these services, Lynn has been unable to correct the circumstances which led to Terard's CINA adjudication. Lynn refuses to accept any responsibility for the removal of his son from his custody, and instead blames it on "the system." The juvenile court noted that Lynn's "progress has been reported as minimal due to his inability to accept responsibility and work on issues that surrounded the removal of his child. * * * It is very clear that [Lynn] does not feel that he has contributed in any way, shape, or form to Terard's placement in foster care." We agree with the juvenile court that clear and convincing evidence exists to support the finding that despite the offer and receipt of services, the circumstance which led to the CINA adjudication continue to exist. Termination was appropriate under section 232.116(1)(c).

From the facts presented above, we also reject Lynn's assertion that he made a genuine effort to complete the responsibilities prescribed in the case permanency plan. The record is replete with Lynn's refusal to accept

responsibility for his actions that led to Terard being placed in family foster care, his refusal to rid himself of drug use, and his failure to cooperate with the services offered. He had unauthorized contacts with his son, contrary to the case permanency plan. These facts and others provide clear and convincing evidence that although at times Lynn made some progress, overall he did not make a genuine effort to complete the responsibilities prescribed in the case permanency plan. The juvenile court did not err in terminating Lynn's rights pursuant to Section 232.116(1)(d) of the Code.

Lynn's next argument is that his due process rights were violated because there was no clear and convincing evidence to support the termination order. *See Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (holding due process clause requires clear and convincing evidence as the standard of proof before terminating parental rights). We have found clear and convincing evidence to support the termination order. Lynn's argument has no merit.

Lynn next argues that the juvenile court erred in considering felony charges in Texas which proved to be false. At Lynn's request, the court inquired into this information prior to the termination proceeding and determined that the arrest record for the charges in question was not a part of the record. Further, in its Order Terminating Parental Rights, there is no reference to the felony charges in the five-page recitation of facts. We find this argument to be without merit.

Lynn's final argument is that the best interests of the child must be balanced with the interests of the natural parent, and when this is done, his parental rights should not have been terminated. It is actually the State's interest

in protecting children that must be balanced against the parents' countervailing interest in being able to raise their children in an environment free from government interference. *In re H.H.,*, 528 N.W.2d 675, 677 (Iowa App. 1995) (citing *Alsager v. District Court*, 406 F. Supp. 10, 24 (S.D. Iowa 1975)).

"[The] court has often recognized that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but rather may be forfeited by certain parental conduct." *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (citing *In re Wall*, 295 N.W.2d 455, 457 (Iowa 1980)). The State has a duty to assure children within its borders receive adequate care and treatment. *Id.* Thus, the State must intercede when parents abdicate their responsibilities. *Id.* In particular, the State may interfere to prevent possible harm as well as to remedy harm. *Id.* Thus, the right to care and custody of one's child serves as a rebuttable presumption and is not absolute. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App, 1996).

Under Chapter 232, the court must first determine whether the statutory criteria have been established by clear and convincing evidence, thus establishing that the parent has forfeited his or her protected interest. *See* Iowa Code § 232.116(1) (1999); *In re T.R.*, 483 N.W.2d 334, 337 (Iowa App. 1992). Only after an affirmative finding that the parent has done so does the court then look to the best interests of the child. *See* Iowa Code §§ 232.116(2), (3) (1999); *In re T.R.*, 483 N.W.2d at 337. That is, once the court concludes that all of the criteria for termination of parental rights have been satisfied, the court must still make a determination as to whether termination would be in the child's best interest. *See, e.g., In re T.R.*, 483 N.W.2d at 337.

Our review of the record finds adequate support for the juvenile court's determination that termination is in Terard's best interests. Central to a determination of this nature are the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In this connection, we look to the child's long-range as well as immediate interests. *Id.* Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. *Id.* Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. *Id.*

Lynn continues to struggle with various anger issues and illegal drug usage. He admitted during the termination hearing that he was not ready to take Terard back in his home without receiving more services. He does not accept responsibility for his actions. We will not make the child suffer indefinitely in the parentless limbo of foster care as Lynn works on becoming a suitable parent. *See In re E.B.L.*, 501 N.W.2d 547, 551 (Iowa 1993).

> There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process. The child will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.
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> The law nevertheless demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills. In view of this required patience, certain steps are prescribed when termination of the parent-child relationship is undertaken under Iowa Code chapter 232. But, beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children.

In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

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As set out above, despite the offer and receipt of various services, Lynn has only marginally, if at all, increased his ability to parent Terard. Terard has the right to a stable home, permanency and security, and should not be made to wait any longer for his father to provide these things. Terard's best interests are served by the termination of Lynn's parental rights and the opportunity to be placed in a stable adoptive home that can meet his emotional and physical needs.

AFFIRMED.