

IN THE COURT OF APPEALS OF IOWA

No. 0-136 / 99-1426

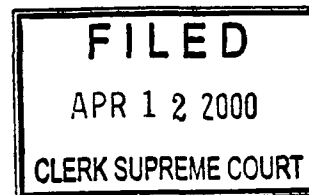
Filed April 12, 2000

**IN THE INTEREST OF
P.M.,**

Minor Child,

D.M., Father,

Appellant.



Appeal from the Iowa District Court for Scott County, John G. Mullen,
Juvenile Court Judge.

Father appeals the termination of his parental rights. **AFFIRMED.**

Robert J. Phelps, Phelps, & Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Gerda Lane Assistant County Attorney, for appellee-State.

Jack Dusthimer, Davenport, attorney for minor child.

Eugene Dwyer of Dwyer & Wing, P.C., Davenport, guardian ad litem for
minor child.

~~Catherine~~ Catherine Alexander of Zamora, Taylor, Clark, Alexander & Woods,
Davenport, for intervenor/appellee-maternal great aunt.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

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ZIMMER, J.

Darron M. appeals the termination of his parental rights to his daughter, **Philadelphia M.** We affirm.

Darron and Roseanna B. are the parents of Philadelphia, who was born in October of 1988. The two never married. In December of 1990, after a domestic altercation, Darron moved to Florida. He joined the service a few months later. He had little contact with Philadelphia until 1995.

Meanwhile, Roseanna had two other daughters with different fathers: Savannah R., born in 1990, and Rosaria M., born in 1992. Only Philadelphia is the subject of this appeal. In September of 1994, the children were adjudicated children in need of assistance ("CINA") based on Roseanna's failure to properly supervise them. She had a substance abuse problem and a nomadic lifestyle. Often, Roseanna left the children with relatives and disappeared for periods of time, once moving all the way to Georgia without telling anyone. She was usually unemployed and often lived with friends. At the time of termination, Roseanna was in prison on a felony charge. In July of 1997, the juvenile court terminated Roseanna's rights to all three children. The two younger girls were placed with Roseanna's aunt.

In the summer of 1995, Philadelphia began living with her father and his wife, who had returned from the service. In June of 1996, Philadelphia again came to the attention of the Iowa Department of Human Services ("DHS") as the subject of a founded physical abuse report. Darron and his wife received services. Things went well until November of 1997, when Darron was arrested for OWI and possession of marijuana. Roseanna's parole from prison occurred

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later that same month. Darron met her by chance at a hockey game and soon began to permit visitation with Philadelphia. One month later, Darron's wife came home unexpectedly and found Roseanna with her husband. Darron renewed his relationship with Roseanna and eventually divorced his wife in September of 1998. The divorce was traumatic for Philadelphia because her stepmother had been a consistent and nurturing caregiver for the child.

DHS became aware of the visits and requested Philadelphia's removal from the home. In January 1998, she was adjudicated CINA and was placed with her half-sisters at the great aunt's home. Despite DHS intervention, Darron remained intractable about maintaining his relationship with Roseanna and permitting her visitation. Darron continued to be openly hostile to DHS and insist he was the only one who could determine who would visit and care for his child. Darron was given supervised visits with Philadelphia but was often late or failed to show.

The State filed a petition to terminate Darron's parental rights on March 18, 1999. In April of 1999, Darron was arrested in Illinois on a felony charge. The termination hearing took place on May 24, 1999, and July 14, 1999. On August 11, 1999, the juvenile court ordered termination pursuant to Iowa Code sections 232.116(1)(e) and 232.117 (1997).

Darron appeals. He contends termination was not in Philadelphia's best interests. He also argues his trial counsel was ineffective for failing to rehabilitate the mother before the juvenile court.

I. Scope of Review. We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Our

primary concern is the best interests of the child; we look at both the child's long-range and immediate interests. *Id.*

II. Philadelphia's Best Interests. Darron does not contend the State failed to meet the statutory elements for termination. He merely argues the juvenile court ignored the testimony of Dr. Joseph Cress, which indicates there should be ongoing contact between Philadelphia and her father. It is true that even if the statutory grounds for termination are met, the termination must also be found to be in the child's best interests. *In re T.R.*, 483 N.W.2d 334, 337 (Iowa App. 1992). This requirement is an added safeguard against mechanical application of the termination statute. *Id.* at 338.

However, we disagree it is in Philadelphia's best interests to maintain contact with Darron. He feels he did nothing wrong in permitting visitation with Roseanna. The law says otherwise. *See In re J.P.*, 499 N.W.2d 334, 340 (Iowa App. 1993) (noting termination causes immediate cessation of parent's legal rights to visitation). He states he will continue to have a relationship with Roseanna, perhaps even marry her. We weigh the harm in severing Philadelphia's contact with her father against his resolve to permit contact with the mother, whose parental rights were terminated for good reason. When faced with the choice of regaining his daughter or severing his relationship with Roseanna, Darron chose Roseanna.

Darron's own living situation is unstable. He has a criminal history of his own and at the time of termination, had a felony charge pending in Illinois. He proved uncooperative with services and failed to attend many scheduled visits with the child. If we permit termination, the great aunt has indicated a willingness

to adopt the child and her two half-sisters. Furthermore, Philadelphia has voiced a desire to stay with her sisters. We find placement with the aunt and half-sisters and eventual adoption to be in Philadelphia's best interests.

We do not give Dr. Cress' testimony the significance that Darron does. Dr. Cress only favored visitation with Darron; he did not advocate that Darron should be given custody of Philadelphia. Despite the fact that Dr. Cress testified an open adoption would be in Philadelphia's best interests, Darron rejected the concept. Repeatedly, Darron prioritized his own needs and desires over those of his child. After our de novo review, we do not find Dr. Cress' testimony outweighs that of other witnesses who recommended termination. We affirm.

III. Ineffective Assistance of Counsel. Darron contends his trial counsel was ineffective for failing to rehabilitate Roseanna to the juvenile court or even investigate her current mental health, substance abuse, lifestyle, or parenting skills.

Trial counsel in terminations are generally governed by the same effectiveness standard used in criminal proceedings. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992) (citations omitted). In order to prevail on an ineffective assistance claim, a parent must show (1) counsel's performance was deficient, and (2) actual prejudice resulted. *Id.* (citations omitted). We afford trial attorneys a presumption that their conduct falls within the range of "reasonable professional competency." *Id.* (citation omitted). The burden of proving ineffectiveness is on the claimant. *Id.* (citation omitted).

We conclude Darron fails to meet either prong. Even if a current evaluation of Roseanna had been introduced at his termination hearing, it would

have had no effect and would have been frivolous. First, the juvenile court found her current life situation irrelevant. The court focused on Darron's own inability to meet his child's needs. Second, we find troubling the notion counsel could be found ineffective for failing to present current information about the mother. Such a requirement would provide a terminated parent, such as Roseanna, an opportunity to present evidence of rehabilitation long after her rights were terminated. She could essentially reopen and reverse her own termination by reestablishing a relationship with the other parent. We find no such procedure exists in our termination statute. Darron cites no authority for this argument which contradicts our concept of res judicata. We cannot conclude counsel was ineffective for failing to provide such information or that Darron was prejudiced. See A.R.S., 480 N.W.2d at 891 (finding counsel not ineffective for failing to move for continuance where there was no ground available for continuance and no reasonable basis to believe mother's attempt at rehabilitation would be any more successful if given more time, so as to establish prejudice).

We conclude the juvenile court correctly terminated Darron's parental rights.

AFFIRMED.