

IN THE COURT OF APPEALS OF IOWA

No. 1-1008 / 11-1406
Filed January 19, 2012

**IN THE INTEREST OF T.S.,
Minor Child,**

**L.D.S., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals an order placing his sixteen-and-a-half-year-old daughter in “another planned permanent living arrangement,” rather than with him.

AFFIRMED.

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary C. Kelley of Public Defender’s Office, Dubuque, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

A father appeals an order placing his sixteen-and-a-half-year-old daughter in “another planned permanent living arrangement,” rather than with him. See Iowa Code § 232.104(2)(d)(4) (2009). This statutory placement option is permitted if there is a “compelling reason” for determining that the arrangements authorized by other subsections would not be in the child’s best interests.¹ Prior to ordering this placement, the court must find convincing evidence of all of the following:

- a. A termination of the parent-child relationship would not be in the best interests of the child.
- b. Services were offered to the child’s family to correct the situation which led to the child’s removal from the home.
- c. The child cannot be returned to the child’s home.

Id. § 232.104(3). On our de novo review, we agree with the juvenile court that these statutory requirements were satisfied.

The child had a troubled past. She was sexually abused by a neighbor and was not properly supervised by her mother, with whom she lived. She did not attend school on a regular basis, left early when she did, and “roam[ed] the streets during the day.” Eventually, the child’s father contacted the Iowa Department of Human Services for assistance.

The department sought and obtained an order removing the child from her mother’s custody. The child was initially placed in two shelters and was

¹ The other subsections provide that the court may do one of the following:

- (1) Transfer guardianship and custody of the child to a suitable person.
- (2) Transfer sole custody of the child from one parent to another parent.
- (3) Transfer custody of the child to a suitable person for the purpose of long-term care.

Iowa Code § 232.104(2)(d).

subsequently returned to her mother for a trial home placement, subject to a safety plan developed by the department.

The placement was not successful. The child was found passed out on the street, with a blood-alcohol level of .27, more than three times the legal limit had she been driving. It was also discovered that she used marijuana, cocaine, and heroin that was billed as cocaine, and engaged in extensive sexual activity.

An evaluator who conducted psychological testing following the removal stated the child “is currently exhibiting significant challenges to her ability to function consistently and effectively in the short-term and long-term.” The evaluator diagnosed bipolar disorder, psychoactive substance abuse, childhood sexual abuse, and borderline personality disorder, and stated the child had low self-confidence, as well as family mental health, support, and learning issues.

Over the next year and a half, the child was placed in several foster homes and, intermittently, with her father. Each time she moved in with her father, she ran away, once for a period of thirteen days. As a result, a department social worker recommended against a permanent placement with him. She testified that the father had “great intentions to provide for his daughter in all aspects of her life” but she expressed concern that the child would “continuously run when faced with his unrealistic expectations.” The child’s counselor seconded this opinion, citing the child’s perception that her father did not understand her and did not listen to her.

The juvenile court summarized the tortured relationship between father and child as follows:

The relationship between [the father] and [the child] can best be described as a “love-hate relationship.” It is clear that both are bonded to each other and want to be in each other’s lives. However, neither of them can provide the other with appropriate respect nor engage in productive communication for any sustained amount of time. The same scenario seems to play out time and again, in which there will be a short period of time in which they get along but then [the father] will establish unrealistic expectations for [the child] or [the child] will refuse to abide by household rules and the short-lived stability will again deteriorate to the point of [the child] running away and engaging in the dangerous activities noted previously.

The court concluded:

[A]nother planned permanent living arrangement for [the child] is necessary because compelling reasons exist that prohibit the entry of a more permanent order, namely, the age of the child which would be a barrier to adoption, as well as the ongoing bond and relationship she has with her father.

We fully concur in these findings and conclusions.

The department went to significant lengths to foster a constructive relationship between father and child. Those efforts failed. Given the child’s history of turning to the streets when in her father’s care, her safety would have been compromised had she been permanently placed with him. Nonetheless, termination of the father’s parental rights was not in the child’s best interests given the obvious bond between them. As the juvenile court concluded, the best alternative was “another planned permanent living arrangement.”

AFFIRMED.