

IN THE COURT OF APPEALS OF IOWA

No. 7-567 / 07-1176
Filed September 6, 2007

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

**G.S., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

G.S., a father, appeals from the order terminating his parental rights.

AFFIRMED.

John Heinicke, Des Moines, for appellant father.

Thomas Crabb, Des Moines, for mother.

Thomas J. Miller, Attorney General, Katherine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

A father appeals from the juvenile court order terminating his parental rights to his daughter. We affirm.

I. Background Facts and Proceedings.

Susan is the mother of Skylar, born in November 1995; Frank IV, born in August 2002; and Tanner, born in October 2004. Frank III is the father of Frank IV and Tanner, and Gregory is the father of Skylar. The only issue presented by this appeal is whether the parent-child relationship between Gregory and Skylar should be terminated. Gregory has been incarcerated since 2000. In February 2002 he was sentenced to 130 months in federal prison for conspiracy to distribute methamphetamine. He is due to be released from prison in November 2008.

On February 7, 2006, Skylar and her brothers were removed from their mother's home because Susan was abusing drugs and the children were not receiving adequate care. On March 28, 2006, the juvenile court adjudicated Skylar, Frank IV, and Tanner as children in need of assistance (CINA).

Since her removal from her mother's care, Skylar has been living with her siblings' paternal grandmother, Kathy. Following adjudication, the children's parents were offered or received services to eliminate the harms present in their mother's home stemming from her drug abuse. However, Susan failed to comply with many of the court-ordered services, and Gregory did not use any of the services due to his ongoing incarceration.

On May 16, 2006, a dispositional hearing was held and custody of the children remained with Kathy, subject to Iowa Department of Human Services

(Department) supervision. Kathy is not a direct relative of Skylar. The court ordered the Department to review Gregory's adult children, Jeff and Jessica, as possible placements for Skylar. Following a review hearing held on November 29, 2006, custody of the children remained with Kathy.

At the permanency hearing on January 30, 2007, Frank IV and Tanner were successfully reunited with their father. Those children are not the subject of this termination appeal. Skylar remained in the custody of Kathy following the hearing.

The State filed a petition to terminate Susan's, Gregory's, and any unknown father's parental rights to Skylar on March 12, 2007. The juvenile court held a contested termination hearing on May 16, 2007. Gregory testified by telephone from prison. He acknowledged he is not currently seeking custody of Skylar. Skylar's guardian ad litem stated she believed it was in Skylar's best interests to terminate her parents' parental rights. She also stated that Skylar is bright and articulate and desired to be adopted by Kathy.

In an order filed May 30, 2007, the juvenile court terminated Susan's, Gregory's, and any unknown father's parental rights to Skylar pursuant to Iowa Code sections 232.116(1)(b),(d),(e),(f) and (I) (2007). Only Gregory has appealed.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the children's best interests in termination proceedings.

In re J.L.W., 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to her long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

In this appeal, Gregory concedes the grounds for termination of his parental rights, which include the ground of abandonment, have been proven by clear and convincing evidence. We agree. Nevertheless, Gregory contends his parental rights should not be terminated because of the bond that exists between him and Skylar. Additionally, he asserts the court need not terminate his parental rights because he has relatives, a son and daughter, who are willing to be considered as placement options for Skylar. Upon our review of the record, we find no merit in any of Gregory's arguments.

The juvenile court need not terminate the relationship between parent and child if the court finds "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c).¹ Skylar is now eleven years old. Gregory has not seen his daughter for nearly eight years. The only contact he has had with Skylar occurred before the child was three years old. At

¹ The language in this section is permissive, and thus it is within the sound discretion of the court, based upon the unique circumstances before it and the best interests of the child, whether to apply section 232.116(3)(c) to save the parent-child relationship. *J.L.W.*, 570 N.W.2d at 781.

that time, Gregory was unaware Skylar was his daughter. Gregory has not visited, spoken with, or sent Skylar cards or letters since he has been incarcerated. Additionally, he did not contact the Iowa Department of Human Services even after the initiation of the child in need of assistance proceedings. Although Gregory expresses affection for Skylar, he does not have a meaningful relationship with her. The evidence simply does not support the conclusion that termination of Gregory's parental rights would be detrimental to his daughter because he has a close parent-child relationship with her. Accordingly, we reject this assignment of error.

Gregory also argues that his parental rights should not be terminated because he has older children with whom Skylar could be placed. Section 232.116(3)(a) provides that "[t]he court need not terminate the relationship between the parent and child if the court finds . . . a relative has legal custody of the child." In this case, there is no evidence that any relationship exists between Skylar and her father's older children. Moreover, termination of the parent-child relationship is "not to be countermanded by the ability and willingness of a family relative to take the child. The child's best interests always remain the first consideration." *C.K.*, 558 N.W.2d at 174. We do not find that it would be in Skylar's best interests to withhold the termination of her father's parental rights in order for her to become acquainted with her father's other children.

Skylar has been living with her brothers' paternal grandmother, Kathy, since February 2006. Skylar has been doing well in her placement, and she wishes to be adopted. Her brothers' paternal grandmother has stated that she intends to adopt Skylar. Skylar deserves a safe and permanent home, which her

father cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Gregory has stated that he has no problem with Skylar's current placement. At the contested termination hearing, he stated that he was not sure that he wanted custody of Skylar, although he wanted to be able to visit her and to get to know her. Skylar should not be forced to wait in a parentless limbo because her father has now decided he may like to get to know her. See *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We conclude termination of Gregory's parental rights is in the child's best interests.

The father also argues that the trial court erred in not applying Iowa Code section 232.116(3)(e). That section provides

The court need not terminate the relationship between the parent and child if the court finds . . . the absence of a parent is due to the parent's admission or commitment to an institution, hospital, or health facility or due to active service in the state or federal armed forces.

Iowa Code § 232.116(3)(e). However, we have held that this code provision does not apply to a penal institution. *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990).

IV. Conclusion.

We affirm the juvenile court's decision to terminate Gregory's parental rights.

AFFIRMED.