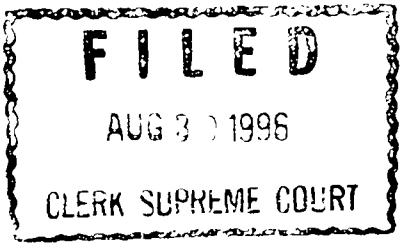
IN THE COURT OF APPEALS OF IOWA

No. 6-497 / 96-257



IN THE INTEREST OF N.S., A Minor Child,

K.N., Father,

Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Associate Juvenile Judge.

A father appeals from a juvenile court order terminating his parental rights. **AFFIRMED.**

William G. Brewer of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and Jaki Livingston, Assistant County Attorney, for appellee State.

Shobhana Kasturi, Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Cady and Vogel, JJ.

SACKETT, C.J.

Traci and Kurt were the parents of Nicholas, born on February 18, 1992. On January 4, 1996, the juvenile court terminated the parental rights of Traci and Kurt. Traci consented to the termination. Kurt contested it and contends with services Nicholas can be placed in his care. The juvenile court decided otherwise. We review de novo to determine whether there is clear and convincing evidence Nicholas cannot be placed in his father's care. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987); *In re T.D.C.*, 336 N.W.2d 738, 740-41 (Iowa 1983); *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993). We find there is and affirm the juvenile court.

In August 1994, the State filed a petition seeking to have Nicholas found a child in need of assistance. Traci had requested Nicholas be placed in foster care. Kurt was then incarcerated at the Oakdale correctional facility. He had been found guilty of "domestic abuse enhanced." He would remain incarcerated until May 1995. While Kurt was incarcerated, he took classes on working with problems in a marriage and contends he learned temper control.

When Kurt was released, he contacted the Department of Human Services seeking the custody of Nicholas. There is evidence he was scheduled for an evaluation but did not appear at the scheduled time. He did not visit Nicholas. His position is the Department of Human Services prevented him from visiting Nicholas. He did not raise this issue in the juvenile court at that time.

Kurt currently lives with his sister. At the time of the termination hearing, he was not on parole. He receives social security because of a disability. He has a borderline personality disorder. He is currently under a psychiatrist's care and is taking medication.

The record shows few, if any, efforts have been made to assist Kurt in obtaining custody of his son. Preserving families is the underlying principle behind these proceedings. The State has the obligation to make reasonable efforts. The number of parental termination cases in this State is increasing. When the State contends services they have offered have failed, the tendency is to blame the parents. The reasonableness of the services the State has offered should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). However, there is no evidence Kurt requested services that were not provided prior to the time of the termination hearing. We have consistently said that challenging the failure of the State to offer parents reasonable services to reclaim their child must be made at the appropriate time. A parent's challenge to services should be made when they are offered. This issue should have been raised earlier and we will not consider it now. *Id.* at 101. Raising the issue at the termination hearing is too late. *See also In re S.A.*, 502 N.W.2d at 25 (the issue of continued foster care after the mother's release should have been raised by challenging the foster placement at the time).

We have concerns about Kurt's previous violent behavior. There is evidence in the record Nicholas is fearful of his father. Nicholas was born in February 1992. Kurt was incarcerated in October 1993. Nicholas was twenty months old the last time he saw his father. While Nicholas suffered from Kurt's behavior while he was in his home, we assume his identifying Kurt with this behavior has been learned rather than remembered.

Kurt engaged in behavior that was destructive to Traci and Nicholas prior to his incarceration. He engaged in similar behavior with a prior companion. Kurt spent some months in solitary confinement while incarcerated after assaulting a guard. We consider past behavior in assessing a parent's ability to take custody of a child. The possibility of the problem being corrected in the future is remote. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa App. 1991).

Kurt's counselor recommended Kurt attend Alcoholics Anonymous meetings. He has failed to do so. He is not able to be gainfully employed and there is no showing he has the ability to meet the needs of Nicholas.

There is a rebuttable presumption that the best interest of a child is served when custody is with the natural parents. Iowa Code § 232.1 (1991); *In re S.J.*, 451 N.W.2d 827, 830 (Iowa 1990); *see also Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982).

The issue of whether a child will suffer harm by the return to a parent must be shown by clear and convincing evidence. *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982); *In re D.P.*, 465 N.W.2d 313, 315 (Iowa App. 1990). There is clear and convincing evidence Nicholas cannot be returned to Kurt's care. We affirm the termination.

While the State talks of Nicholas and a brother, who is not Kurt's child, being adopted, there is nothing in the State's brief concerning the chances this child has for adoption. The State contends termination and adoption is in Nicholas' best interests. We remind the guardian ad litem of the responsibility to see that Nicholas has an adequate, safe, and consistent placement. We affirm.

AFFIRMED.