FILED
MAR 29 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF	)	
LISA MARIE TAGUE,	)	Filed March 29, 1978
Child,	)	
And	)	350 / 3-60318
CHARLES LEE SHAFFER,	)	
Appellant.	)	

Appeal from Scott Juvenile Court - Don A. Petrucelli, Judge.

Natural father appeals termination of his parental rights under § 232.41(2)(d) and (e), The Code 1975. - AFFIRMED.

Samuel Walker, Davenport, Attorney for the child.

Michael Hobert, Davenport, for Appellant.

Vincent Motto, Davenport, for natural mother.

Richard C. Turner, Attorney General of Iowa, Stephen C. Robinson, Special Assistant Attorney General, Theodore R. Boecker, Assistant Attorney General, and Edward N. Wehr and Gary Koos, Scott County Attorneys, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Lisa Marie Tague was born of unwed parents on January 5, 1974. Her natural mother, Dauna Rae Tague Devol, consented to the termination of her parental rights in July of 1975, and takes no part in this appeal. Lisa's natural father, Charles Lee Shaffer, age 20, appeals the trial court's termination of his parental rights under §§ 232.41(2)(d) and (e), The Code 1975. We affirm the trial court.

Charles argues on appeal that the evidence is insufficient to justify termination on either of the grounds specified. Our review in this matter is **de novo.** See §§ 232.40-232.49, 232.58, The Code 1975; Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977); In the Interest of Wheeler, 229 N.W.2d 241, 244-245 (Iowa 1975). In cases such as this, the clear and convincing standard of proof is to be applied by the trial court. In our **de novo** review, we are to employ the same standard. In the Interest of Hochmuth, 251 N.W.2d 484, 489 (Iowa 1977); see In the Interest of Kelley, ___ N.W.2d ___ (Iowa, filed February 22, 1978).

The evidence presented in the instant case is overwhelming that Charles has not and probably cannot afford Lisa the care, love and continuing guidance which is so essential to her well-being and development. Unfortunately, after reviewing this record, one is left with a sad and discouraging impression of Lisa's family and home environment during her young life. An evaluation of Charles's personal history, characteristics and attitudes suggests that, under the current state of facts, Lisa is a prime candidate for further parental neglect and disregard for her personal welfare. We should not wait for this to happen, especially since this child has been under the supervision of the Department of Social Services since approximately June 1, 1974. See In the Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975).

In making a determination regarding termination of parental rights, we are guided by In re Interest of Warren, 178 N.W.2d 293, 298 (Iowa 1970), where the court stated:

> " '. . . a determination is necessarily based on what is likely to occur in the future because of present conditions and because of what has occurred in the past.' In re Morrison, 259 Iowa 301, 307, 311, 144 N.W.2d 97, 100, 103."

Although the record in this case reflects that Charles has demonstrated some degree of personal and non-sacrificial love and attention in the past, there is little, if any,

evidence to indicate that he is willing to take any affirmative steps to physically care for Lisa or minister to her long-range future needs.

Charles has never made enough money to pay any taxes, and he has refused to verify any of his earnings to the Department of Social Services. As a result, he has demonstrated no realistic plan as to how he intends to support Lisa. Charles even argues that his $15 per week support obligation for Lisa is excessive. He contends that he should have no financial obligation of support inasmuch as he does not have custody of Lisa, and that he cannot afford that amount anyway. Charles has only contributed $150 toward Lisa's support since June 1, 1974 -- hardly an admirable demonstration of good faith and concern for Lisa's welfare.

The severity of the overall problem was perhaps best summarized in the concluding report of the social service worker to the court:

> "In summary, Charles Shaffer has continuously been unable to establish an adequate environment for Lisa over the last two years. He has been given definite, realistic standards and suggestions and has failed to use and meet them. When he has made slight gains, such as getting a job, he has consistently been unable to sustain them. His disorganization and failure to achieve has caused disruption and stress for Lisa. At present, he faces at least eight to nine more months of incarceration on the drug charges. Even before this additional stress, he was unable to organize and direct his life in a productive fashion and there is little evidence to beli[e]ve that he will be able to after he is released. At any rate, Lisa is in need of permanent placement, and it would be detrimental to her best interests to keep her waiting for Chuck's stabilization any longer as he has been given every opportunity. Because of Chuck's lack of stabilization and adequate performance and Lisa's need for stability, our agency's recommendation, based on our two years of involvement with him, is that his parental rights be terminated and Lisa be placed for adoption.

The record before us also contains other information which concerns us deeply. Apparently, Charles has been living with his girlfriend, Linda, for approximately two years. Although we do not condone this type of cohabitation, we are not as disturbed by it as we are by the fact that Linda gave up her two small children to her former husband because of numerous neglect complaints filed regarding them. Furthermore, Linda has provided the basic living expenses when Charles was out of work, which constituted a considerable amount of time.

Charles has a violent temper and admits beating his girlfriends with little or no regret, indicating to the social worker that they "had it coming." In fact, Linda was hospitalized because of just such a beating. Charles has constantly changed residences

and has only remained in each for a short period of time. From October 23, 1974, until February 4, 1975, he lived in four different places and spent 35 days in jail. In the past two years, Charles has been arrested three times and incarcerated twice. He was sentenced to a one year sentence in the county jail for his most recent offense, but was out on appeal at the time the instant matter was heard in the trial court.

Charles also experienced difficulty in making and keeping appointments with the social worker, and he either completely missed or was late in attending many of them. At trial, Charles testified that his mother would be able to assist him in raising Lisa. However, this alternative also presents serious drawbacks in that she has no male assistance at home since she is divorced, currently is receiving A.D.C., is recovering from serious surgery, and has two teenage "problem" children residing with her.

This child has been shifted from pillar to post since June 1, 1974, and she is entitled to an immediate decision from this court concerning her best interests and welfare. We cannot sit by and wait until Charles is mature enough to assume his proper parental responsibilities. The interests of the child demand that action be taken now. See In re Interest of Warren, supra; In re Interest of Morrison, 259 Iowa 301, 144 N.W.2d 97 (1966); In re Interest of Scarlett, 231 N.W.2d 8 (Iowa 1975); In the Interest of Kester, supra.

After reviewing the entire record, we believe the conclusion is inescapable that the trial court was correct in terminating the parent-child relationship between Charles and Lisa. Someday, perhaps, Charles may mature into a well-adjusted stable person who is able to serve as a good parent. However, Lisa is already four and her needs must be met now. In the Interest of Kelley, supra, slip op. at 10.

We have reviewed Charles's other allegations of error and find them to be without merit. Sections 232.41(2)(d) and (e) have withstood constitutional attack in the past, In Interest of Crooks, ___ N.W.2d ___, slip op. at 4-5 (Iowa, filed February 22, 1978); In Interest of Lewis, 257 N.W.2d 505, 509-512 (Iowa 1977); Long v. Long, supra, at 144-145; In Interest of Hochmuth, supra, at 488-489; cf. Alsager v. District Court of Polk County, Iowa, 406 F.Supp. 10 (S.D. Iowa 1975), aff'd, 545 F.2d 1137 (8 Cir. 1976), and we are aware of no circumstances in the instant case which would serve to render this statute unconstitutionally vague as applied.

Effective April 3, 1975, Lisa was adjudicated a dependent and neglected child, as defined in § 232.2(14)(b) and (15)(d), The Code 1975, and was placed in the custody of the Department of Social Services on April 25, 1975. After that time, various guidelines, suggestions and specific standards of personal responsibility were established for Charles by Barry Bennett of the Scott County Department of Social Services. These guidelines were formally presented to Charles in written form on September 23, 1975. On October 9, 1975, the termination petition was filed pursuant to § 232.41(d) and (e), The Code 1975. In its Order of January 28, 1976, the court directed that the suggestions and guidelines presented to Charles on September 23 "be the guidelines that Charles Lee Shaffer is to follow" and held that the matter of termination should be reviewed in four months.

This provision in the January 28, 1976 Order adequately served as a "direction of the court" which placed Charles on official notice of the actions that were expected of him by the court to correct the conditions. Consequently, this case does not suffer from the same infirmity that was present in In Interest of Crooks, supra, slip op. at 4-5.

As the trial court later concluded in its Order of December 27, 1976 granting the termination of parental rights, Charles has failed, after an adjudication of neglect and dependency and with reasonable efforts under the direction of the court and of the Department of Social Services, to correct the conditions leading to this termination as provided in § 232.41(2)(e).

We find no error and affirm the district court.

AFFIRMED.

Oxberger, J., concurs in result only.