FILED
SEP 9 1977
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN THE INTERESTS OF:	)	
	)	
JENNIFER BLIZEK and	)	
DINO BLIZEK,	)	Filed September 9, 1977
	)	
Children,	)	
	)	
and	)	196
	)	3-59611
KEITH BLIZEK,	)	
	)	
Appellant.	)	

Appeal from Scott District Court - Don. A. Petruccelli, Judge.

Appeal from termination of parental rights - AFFIRMED.

James D. Hoffman, of Davenport, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Stephen C. Robinson, Special Assistant Attorney General, Michael P. Murphy, Assistant Attorney General, Robert C. Bradfield, Assistant Scott County Attorney, John W. Newport and Gary K. Koos, of Davenport, counsel for appellees.

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

DONIELSON, J.

Keith Blizek, the father-appellant, appeals the lower court's order terminating his parental rights with respect to Jennifer, age 8, and Dino, age 6 1/2. He argues that the evidence on the record was insufficient to support a finding that any of the statutory grounds for terminating parental rights had been satisfied, and that the best interests of the children are not served by the termination of his parental rights.

On September 26, 1975, a petition to terminate the parental rights of Sandra Jean Blizek Bier and Keith Wayne Blizek in their natural children was filed, alleging grounds for termination enumerated in § 232.41(2)(b) and (e), The Code (1975). Apparently, an adjudication of dependency had been made in 1972, and one termination petition had been filed in late 1973, but was subsequently dismissed after hearing.

On December 2, 1975, a supplemental petition was filed, alleging other grounds for termination set forth in §§ 232.41(2)(a) and (c), The Code (1975). A hearing was held on January 20 and 21, 1976, and on May 6, the court entered its Findings of Fact, Conclusions of Law, Order and Decree, to the effect that parental rights should be terminated on all of the grounds alleged.

Although the record is replete with facts surrounding this unfortunate family situation, only the most crucial will be developed here. Keith and Sandra Blizek were married in 1967, and produced two offspring, Jennifer and Dino. Keith, age 43, had previously been married for about ten years and had two children by that marriage. Shortly after his first wife unexpectedly divorced him in 1967, Keith became an alcoholic, and remained one for about seven years. Keith did not have any contact with or pay support to the children of that marriage for more than two years prior to the hearing, although he explained that his wife's threats to have him incarcerated because of unpaid support prevented him from seeing those children.

Keith's marriage to Sandra ended in disaster as well, and they separated in early 1972. Although Sandra had temporary custody of the children at that time, Keith later took the children and attempted to raise them because he felt that Sandra's influence on the children was detrimental to their welfare. A nervous breakdown forced him to place the children in foster care in 1972. After Keith's

release, the children were "thrown" back and forth from one parent to another, until late March, 1972, when the children were again placed in foster care where they currently remain.

After placing the children in foster care in March, 1972, Keith moved around the country, and testified that he later went to Belleville, Illinois in the belief that the children were there with Sandra. Apparently she showed him a divorce decree which purportedly gave her custody of the children and she refused to let him see them. Keith did testify that he called Sandra's brother several times in the next year and a half, but was unable to obtain any information about the children.

In October, 1973, Keith married Jean, his current wife, and did not tell her about the two children from his previous marriage with Sandra, supposedly because he felt guilty about abandoning them. Both Keith and Jean drank heavily when they were first married, but both testified that neither of them drinks now.

While the children have been in foster care, the Department of Social Services has primarily worked with Sandra to establish a durable family environment, but to no avail. Similarly, many futile attempts were made to contact Keith to determine if he desired to become involved. Although the Department contacted Keith's parents several times in an attempt to locate him, he testified that he never received notice of those attempts.

Jennifer and Dino have spent most of the past five years in the same foster home and are generally normal, well-adjusted children who view the foster parents as their own. Both expert witnesses felt that the children should stay where they are and that a sudden change in environment would not be advisable at this point unless it could be accomplished gradually. Additionally, the foster parents have expressed an interest in adopting the two children if that would be feasible.

Upon this set of circumstances, the court below found that all of the allegations of refusal to give proper parental care, failure to correct conditions following an adjudication of dependency, abandonment, and failure to provide financial support and education, were true, and ordered the parental rights of Keith and Sandra terminated.

On appeal, Keith asserts that the evidence presented was insufficient to support these findings. However, the record is all too clear and points to a pattern

of conduct which is essentially not contradicted. Keith's total lack of involvement with his children over the past three and one half years weighs heavily upon this court. We cannot, in good conscience, ignore his actions in the past, and only give weight to his promises for the future.

Although Keith argues that his lack of involvement was the result of seven years of alcoholism, other testimony indicates that at no time did he demonstrate a desire to assume parental responsibilities. Even when Keith believed that the children were with Sandra, he only took minimal steps to obtain information about them, and at no time did he seek their return. Even when Keith became aware that the Department of Social Services was involved, he did not make any contact with the Department. At no subsequent time did he attempt to locate the children. When he married Jean, his third wife, he didn't even initially tell her about Jennifer and Dino, nor has Keith significantly contributed to the financial support of these two children. Although Jean stated that she desired to obtain custody of the children, she previously stated that if she and Keith were not able to get them back immediately, they should abandon their efforts in this regard. Such statements seem to reflect a hardened and insensitive attitude toward these children and contradict expressions of desire to assume parental responsibility.

The law is clear that bad past conduct is not sufficient in and of itself to terminate parental rights where there is nothing to show that the parent is not presently a capable custodian. In Interest of Freund, 216 N.W.2d 366 (Iowa 1974). However, evidence in this record fails to indicate that Keith is presently a capable custodian.

Although the evidence demonstrates that in some basic areas, Keith has reversed his life, the record does not bear out the fact that he is currently capable of raising these children. Keith must be held accountable for his actions. His attitudes and actions in the past lend no support to any argument that he is a suitable parent at the present. See generally, In Interest of Robbins, 230 N.W.2d 489 (Iowa 1975); In Interest of Long, No. 3 59262, _____ N.W.2d _____ (Iowa, filed June 29, 1977). Consequently, we hold that there was sufficient evidence to demonstrate that one or more of the alleged statutory grounds for terminating Keith's parental rights existed.

Keith also suggests that the best interests of the children are not served by the termination of his parental rights. Our review in this matter is de novo. Section 232.58, The Code; In Interest of Long, supra; rule 4, Rules of Appellate Procedure. We give weight to the findings of the trial court, but are not bound by them. Rule 14(f)(7), R. App. P. In the context of a case involving the termination of parental rights, the supreme court has stated:

> "Substantial weight must be given to the findings of the trial court who sees as well as hears the testimony at the informal hearing ... (citations omitted) ... [I]n matters of this kind the trial court has before it more than a printed record and exhibits. Such things as the demeanor of the parties, the candor or lack thereof of the witness, the attitudes real and assumed, and the apparent motives of those testifying, are entitled to much weight in making findings in these matters ..." In Interest of Morrison, 259 Iowa 301, 306, 144 N.W.2d 97 (1966).

While there is a presumption that the best interests of the children will be served by leaving them with their natural parents, such a presumption is not conclusive. In Interest of Yardley, 260 Iowa 259, 149 N.W.2d 162 (1967), In Interest of Morrison, supra. We think that this case presents a situation where the presumption has been overcome. See In Interest of Long, supra, slip op. at 5. A consideration of the best interests of these children reveals a need for stable, continuous placement in a well-established home environment, something which Keith was never able (or perhaps even willing) to provide.

Both Jennifer and Dino have spent the past five formative years with the kind of family which is able to provide the type of environment that these children need. Any sudden and complete disruption of this pattern would be harmful to the children, according to the testimony of the experts in this case. "Custody should be quickly fixed, and little disturbed." In Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975). Although Keith declared that he has "changed his ways", his past behavior and attitudes and the stable family arrangement that currently exists operate to convince this court that the termination of Keith's parental rights is in the children's best interest.

This court does not feel obliged to gamble on the welfare of these children and disrupt a clearly advantageous family arrangement in order to accommodate a father who suddenly announces a newly discovered sense of responsibility. As the supreme court has recently stated, "[t]hat which has taken place and is likely to

occur in the future because of present conditions must be considered. In other words, we are required to determine the long-range as well as immediate interests of the child." In Interest of Long, supra, slip op. at 6. After a detailed consideration of the facts of this case, we feel that the long-range and immediate interests of these two children is best served if they remain in the same type of environment in which they have lived for the past five years. We further hold that the best interests of these children is served by the termination of Keith's parental rights. Therefore, the judgment of the lower court is affirmed.

AFFIRMED.

All judges concur except Oxberger, J., who dissents.

OXBERGER, J. (dissenting)

I dissent. The majority concludes: "We further hold that the best interest of these children is served by the termination of Keith's parental rights." The court in State v. In re Interest of Lewis, # 3-59205, filed August 31, 1977, __ N.W.2d __ (Iowa 1977), said:

> "Of course, best interest of the children is of paramount but not overriding importance. (citations) It is also understood there exists a parental right to integrity of the familial relationship unless by conduct it be forfeited. (citations) Furthermore, a sovereign is duty bound, as parens patriae, to assure proper treatment of all children within the State. (citations) Clearly, these are not competing but rather relative rights and interests."

In **Lewis** the court said:

> "Surely Jay and Dawn should not be indefinitely left in a parentless limbo to await the speculative maturity of those who have not, over a period of three or more years, given actual assurance of ever achieving the desired result." **Lewis**, supra at 13.

However, in this case Keith is immediately capable of assuming his parental duties. He has been steadily employed for a number of years and has overcome a serious debilitating problem with alcohol by a significant display of self-discipline. He has no debts and is attempting to improve himself by attending night school to become a carpenter. He has a strong, stable marriage. His present wife Jean wants to help raise these children. She successfully raised three from a previous marriage.

The court concluded that the parental rights in **Lewis** had been forfeited by actual conduct amounting to a failure to maintain a sanitary home environment, a failure to provide proper nourishment, a failure to respond to medical problems, a failure to deal with drinking problems, a failure to maintain employment and a failure to preserve the marriage. **Lewis**, supra at 12.

Keith's rehabilitation stands in stark contrast to such a record. In my opinion the record is silent as to any single fact that would indicate that presently Keith and Jean could not provide well for these children. The court has indicated great reluctance to permanently sever parent and child; it has looked very hard to find a basis for continuing such ties:

> "While we feel sufficient grounds existed for the order of termination when made, it is possible conditions in the home

> or Wanda's conduct have improved to the point where some or all the children may properly be returned to her. We are reluctant to approve taking the children from their mother permanently without giving her another opportunity to show she is now capable of caring for them in a manner not detrimental to their mental health or morals. Such a showing would accord with the declaration of section 2 of chapter 215 (code section 232.1) that a child 'shall receive, preferably in his home, the care, guidance and control that will conduce to his welfare and the best interest of the state,' . . . ." In re Interest of Yardley, 260 Iowa 259, 269, 149 N.W.2d 162, 167 (1967).

Keith asserted his absence and silence was induced by his perception of the divorce decree provisions and by his alcoholism. If we accord him some deference for truth and rehabilitation, we must also accord his children an opportunity to know and be loved by him. Undoubtedly Jennifer and Dino are loved by and love their foster parents. This cannot, however, suffice to support a termination of Keith's parental rights. In Brem v. Swander, 153 Iowa 669, 675, 132 N.W. 829, 832 (1912), the court observed:

> "But we find nothing to indicate that if these two children are restored to their father, they will not, within a reasonable time, be satisfied with their relations to him and his present wife. They have been separated from him for several years, and the separation had been under circumstances somewhat calculated to prejudice them against him. The youngest is now only six years of age, and therefore not old enough to have any deepseated preferences. The girl, Esther, appears to entertain a prejudice against her father founded upon his treatment of her mother, which she may well abandon when she is established in his home. Under any circumstances, the affections of children for others than their parents are not sufficient in themselves to warrant the repudiation of the natural relationship of parent and child."

As the professionals characterized this case, it is a choice between a natural parent, apparently rehabilitated but without actual contact with his children for the last 3 1/2 years and foster parents who during these years have provided stable and loving care. I note that in In re Interest of Welcher, 243 N.W.2d 841, 845 (Iowa 1976) the court observed:

> "We do not anticipate this mother can provide the superior home and stimulation Derrick has enjoyed in the foster home . . . . But she must provide for her son's physical and emotional needs in a home in which there is a wholesome mental and moral atmosphere. If she should fail to do this despite the good faith support of the welfare department, serious consideration must be given to a severance of the parent child relationship."

In returning the child to the mother under appropriate safeguards, the **Welcher** court relied upon the general principle of In re Interest of Freund, 216 N.W.2d 366, 369 (Iowa 1974):

> "That a parent has once been guilty of misconduct or even child neglect is not alone sufficient to deprive him of the custody of his child, where there is nothing to show he is not presently a fit and capable custodian for the child."

In my opinion there is nothing to show that Keith is not presently a fit and capable custodian for his children. The legislature declared a preference that children be nurtured by their natural parents. Section 232.1, The Code, 1975. Keith and Jean stand ready to provide such a home with every promise that Jennifer and Dino will prosper over time.

I would not terminate Keith's parental rights.