

IN THE COURT OF APPEALS OF IOWA

MAR 22 1979

CLERK SUPREME COURT

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IN RE: THE INTEREST OF)
MISTRY CORINNE DARROW,)
MARLYS DARROW, Appellant.)

Filed March 22, 1979

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3-62198

Appeal from Marshall County Juvenile Court - Roger R. Halleck, Judge.

Natural mother appeals from a juvenile court judgment which held that her two-year-old daughter was a child in need of assistance as defined by sections 232.2(13)(b) and (h), The Code, 1977, and that she should be denied temporary custody of the child.
REVERSED IN PART; APPEAL DISMISSED IN PART.

Curtis A. Ward of Mowry, Irvine & Brooks, Marshalltown, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; Stephen C. Robinson, Special Assistant Attorney General; and Phillip L. Krejci, Assistant Marshall County Attorney; for the State of Iowa.

Lorenz Fett of Pattie, Hinshaw & King, Marshalltown, Iowa, for guardian ad litem.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Marlys Darrow appeals from judgment of the juvenile court which found that her two-year old daughter, Mistry Darrow, was a child in need of assistance as defined by sections 232.2(13)(b) and (h), The Code, 1977, and that she was not an appropriate custodian for her daughter. She alleges the juvenile court erred because there was insufficient evidence to find her daughter was a child in need of assistance. She further asserts that the juvenile court acted arbitrarily and in abuse of its discretion in removing custody of the child from her.

We agree with appellant's assertion that the evidence was insufficient to support a finding that Mistry Darrow was a child in need of assistance and reverse. We, however, do not reach appellant's second issue regarding custody of the child because that portion of the case is moot.

I. Mootness

The juvenile court's order, dated June 15, 1978, stated that "temporary care, custody and control of Mistry Corinne Darrow should be . . . transferred to the . . . Department of Social Services, for placement in a licensed foster home On or about December 14, 1978, the Department . . . may place Mistry Corinne Darrow with her mother, Marlys Darrow, without further Court order." App. p. 8. Custody of the child was transferred, in fact, to the appellant on or about December 14, 1978, and remained with her on January 5, 1979, when this court heard oral argument of the case.

In general, an issue is moot if it has become academic or nonexistent. A case is moot "when a judgment, if rendered, will have no practical legal effect upon the existing controversy." Board of Directors Independent School District of Waterloo v. Green, 259 Iowa 1260, 1264, 147 N.W.2d 854, 856 (1967).

Ordinarily, a case which has become moot or which presents only an academic issue will be dismissed on appeal. Id. at 1264, 147 N.W.2d at 856. An exception to that rule exists, however, when the issue presented is of substantial public interest. See Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510, 514 (1978); Catholic Charities v. Zalesky, 232 N.W.2d 539, 543 (1975). Criteria for determining existence of the requisite degree of public interest are: 1) the public or private nature of the question presented; 2) the desirability of an adjudication of the issue for future guidance of public officials; and 3) the likelihood of future recurrence of the same or similar problem. Burns v. Siebenmann, 266 N.W.2d 11, 13 (Iowa 1978); Board v. Green, 259 Iowa at 1265, 147 N.W.2d at 856.

We find that the issue of temporary custody in this case meets none of the criteria and thus should not be reviewed on appeal.

II. Sufficiency of the Evidence

Our review of the juvenile court's finding that appellant's daughter was a child in need of assistance on June 15, 1978, is de novo. § 232.58, The Code 1977. The State has the burden of showing the allegations by clear and convincing evidence.¹ The State contends it has met that burden and that appellant neglected the best welfare of her daughter which resulted in the child's exposure to conditions injurious to her health.

The evidence shows that Mistry Darrow suffered a number of injuries during the two or three month period in which appellant cohabited with Richard Sexton. These injuries included bruises under her finger and toenails, small circular sores on her feet and ankles, and a serious burn to her face and neck which required hospitalization on May 15, 1978. The juvenile court in its order concluded, however, that the weight of the evidence supported the appellant's position that the doctor did not request hospitalization on the day he initially saw the child on May 13, 1978. The court also stated that the evidence pointed to the conclusion that Richard Sexton personally had something to do with the severe burn suffered by Mistry Darrow. Appellant denied any knowledge of the origin of the burn or of any mistreatment of the child by Richard Sexton. She submitted to a polygraph examination, the results of which were introduced by stipulation at the hearing. These showed there was no deception detected.

Appellant repeatedly stated that if she had known Sexton was involved in the injuries to her child she would have kept her child away from him. At the time of hearing, appellant stated she was no longer living with Sexton, had no plans to move back with him or to continue her relationship with him. She agreed not to see Sexton if that was a

¹ Sections 232.2(13)(b) and (h) state that a:

"child in need of assistance" means a child:

* * *

b. who is in need of special care and treatment required by his physical . . . condition which the [parent] is unable to provide.

* * *

h. who is living under conditions injurious to his . . . health or welfare.

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condition for having custody of Mistry. The social worker in charge of the case testified that she had no reason to believe that appellant would continue to see Sexton.

In conclusion, we find that there was an absence of clear and convincing proof by which the juvenile court could find that Mistry Darrow was a child in need of assistance at the time of the hearing on June 14, 1978. The State failed to show that the cause or causes of the child's injuries were or should have been foreseeable; there was no evidence that the conditions which led to the child's injuries persisted to the date of hearing; there was no showing that appellant failed to take prompt and reasonable action to obtain medical attention for the child's injuries or that she failed or refused to follow the medical advice which she was given; there was no evidence to show that the child required any special care at the time of hearing.

The portion of the juvenile court's judgment finding Mistry Darrow to be a child in need of assistance, therefore, is reversed.

REVERSED IN PART; APPEAL DISMISSED IN PART.