

IN THE COURT OF APPEALS OF IOWA

No. 0-482 / 90-510

FILED

OCT 23 1990

CLERK SUPREME COURT

IN THE INTEREST OF D.L.W., A Child,

G.W., Father,

Appellant.

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Appeal from the Iowa District Court for Linn County,
Robert E. Sosalla, District Associate Judge.

Father appeals the termination of his parental rights.

AFFIRMED.

David E. Grinde, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Gordon E. Allen,
Deputy Attorney General, and Charles K. Phillips, Assistant
Attorney General, for appellee State.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.,
but decided by Schlegel, P.J., and Hayden and Habhab, JJ.
Sackett, J., takes no part.

PER CURIAM

Appellant is a father who challenges a trial court order terminating his parental rights. He contends there is not clear and convincing evidence his child cannot be returned to him. We affirm.

The child was born to appellant father and his wife, who is not a party to the appeal, in August 1982. The parents separated in April 1987 and divorced in February 1988. The mother has not sought custody of the child nor did she challenge termination.

In May 1987 the father requested services from the Department of Human Services to assist him with parenting. He received some services. On December 17, 1987, workers visited the home, found it filthy, and obtained the same day a petition to have the child removed. On December 21, 1987, the State filed a petition asking the child be declared a child in need of assistance, and, though the condition of the home had improved, the temporary order was affirmed and the child was found to be a child in need of assistance. The child was left in foster care.

The father was to be evaluated and efforts were to be made to schedule in-home visits with the child. There never were any in-home visits. At a dispositional hearing on February 16, 1988, the court noted the house had been cleaned but found the child could not be returned home because of the father's behavior and inability to control his anger during visitation. The challenged behavior,

though in his daughter's presence, was not directed toward his daughter.

The father has attended scheduled visitations, nearly always appearing early, and made an effort to comply with requirements. He has also displayed considerable anger with the department. He has called workers improper names, and has acted badly in their presence. Several workers have removed themselves from the case because of their fear of him. He has problems, including financial problems. There were criticisms of his interactions with his daughter during supervised visitation. Apparently because of his actions, additional visitations were denied. His daughter has at times indicated a strong desire not to attend visitation, because of her father's attitude toward others during the visitation period.

The father also suffers from a condition referred to as a manic depressive disorder. The disorder is controlled by medication but the father does not always take the medication.

★ The child has never suffered physical or sexual abuse. She was healthy when removed from her father's care. At the time of removal she was very attached to her father, and her father was very attached to her. The father has maintained contact with his daughter and has shown continual interest in her well being. This family's entry into the system was the result of the father seeking assistance with parenting. Since entry into the system,

there has been a deterioration of the parent-child relationship. The first question is whether there is clear and convincing evidence the parental rights should be terminated. See Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). If there is, then we look to the best interest of the child to assure that termination is in fact in her best interest. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The father has developed a distrustful attitude toward the Department of Human Services. He feels it is their intent to steal his child. He has been threatening to workers assigned to his case.

The trial court determined the father has the ability to help the child but has failed to demonstrate a perception of the child's needs. The Child Development Clinic at University Hospitals in Iowa City recommends termination, contending the father is unable to tend to his own needs and those of his child.

A major problem in this case has been the father's inability and refusal to communicate and work with the Department of Human Services. He is belligerent and hostile toward the department and distrustful of it. A second problem has been his failure to regularly take medication prescribed to control his mental disorder.

This father has the desire to parent and has made an effort to parent. There is no evidence he has physically or sexually abused his daughter or mistreated her in any

way. However, we do not find he will have the ability to care for the child in the near future. See In re A.C., 415 N.W.2d 609, 611-12 (Iowa 1987) (court ordered termination of parental rights of mother who suffered from a bipolar illness which caused an antisocial personality which would prevent her from caring for her children in near future).

By far the worst problem, however, is the father's mental instability. He has exhibited varying degrees of manic depressive behavior throughout the time the DHS has been involved in this case. His medical doctor testified there had "unfortunately" been no improvement in his overall prognosis since 1988, mainly due to the father's unwillingness to continue on the prescribed medication.

The father has also shown signs of paranoia. He claims the DHS has threatened his life and well-being. He claims the DHS apparently has called local merchants and wrecked his credit rating. His mental instability continues with little chance of improvement due to his unwillingness to cooperate in the medical treatment.

The instability affects the child. She is confused as to whether her father is yelling at her or the DHS workers when he launches into one of his tirades. After visitations she experiences bedwetting problems. The child needs a stable environment to grow in. She needs rational adults to guide her. The father is unable to communicate with her on her level. He does not appear to comprehend the responsibility of being a parent.

The father may pose a threat to the daughter. Although there is no evidence of any physical or sexual abuse at this time, the doctor did testify this behavior could manifest itself in the future. Some of the DHS workers testified in a similar manner. Based upon this record, we cannot say the child would not be endangered by returning her to her father.

The child's mental health also concerns us. To return her to the home would further expose her to her father's instability and at times rather bizarre imaginings and behavior. This would be contrary to her best interests.

We agree the child cannot be safely returned to her father. However, she should not be forced to suffer indefinitely the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The child is presently in her most important formative years. She cannot afford to wait until her father is ready to parent her. Her needs are immediate and critical. The child should not be forced to wait endlessly for the maturity of her father. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

Given the father's past performance, see Dameron, 306 N.W.2d at 745, his resistance toward service providers, and the child's tender, formative age, we affirm the juvenile court.

AFFIRMED.

Hayden and Habhab, JJ., concur; Schlegel, P.J., dissents.

SCHLEGEL, P.J. (dissenting)

I agree that D.L.W. should remain a child in need of assistance and recognize that this child cannot wait forever for her parent to put his life in order. Nevertheless, I question whether there is clear and convincing evidence to support termination in this case.

The record shows appellant has remarried and now has an appropriate environment in which to raise a child, thus eliminating the original need for removal. Although appellant has occasionally not taken his medication to control his manic depressive disorder, I do not think this necessarily should dictate termination of the parent-child relationship. Furthermore, I believe the majority places far too much reliance on appellant's relationship with DHS officials, especially given the parent-child bond and the fact that appellant sought help only to have his child removed.

I would reverse and remand this case to the juvenile court with directions to order the DHS to make reasonable efforts to reunite this family.