FILED
OCT 29 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-334 / 91-427

IN THE INTEREST OF

S.L.B.,
Minor Child.

357

G.B., Mother,and C.H., III, Father,

Appellants.

Appeal from the Iowa District Court for Black Hawk County Walter W. Rothschild, Judge.

Parents challenge the order terminating their parental rights to their infant girl. **REVERSED AND REMANDED.**

Kevin D. Engles of Correll & Sheerer, Cedar Falls, for Mother-Appellant.

Carter J. Stevens of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for Father-Appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, and John Parmenter, Assistant Attorneys General, for appellee.

Patricia McGivern, of Clark, Butler, Walsh & McGiverin, Waterloo, for the child.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The unmarried parents of a female child born August 20, 1989, appeal the trial court's order terminating their parental rights. Our review is de novo. See In re D.T., 435 N.W.2d 323, 329 (Iowa 1989); In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984).

The parents, though not married, have had a long-term relationship. They are the parents of another child born November 18, 1990, in Texas. That child is currently in their care in Texas. The mother had an older child born in Iowa on August 14, 1987. That child was removed from her mother's care because on about November 5, 1987, when she was eleven weeks of age, she suffered a spiral fracture of her leg. The child was not taken for treatment for over a week. The mother's parental rights to her oldest daughter were terminated in October 1989.

The father of this child was living with the mother when her oldest child was injured. He initially denied causing the injury. He later admitted he caused it. His statement about the injury was:

> Around November 5th 1987 I was in my brothers condominium. G. (the mother) didn't tell me where she was going. . . . man came to the door and complained about the work I had done on his car. After he left I was mad at him and thinking about all the problems I was having. . . . I took a shower while S. (the baby) was sleeping on the couch . . . I heard S. fussing and came out of the bathroom. . . . I came out to the living room and S. was on the floor in front of the couch. I reached down and grabbed her left foot with my right hand and twisted her left leg hard as I

> picked her up with my left arm under her head. When I twisted her left leg I hear it pop. She started crying. I walked her around the house for 45 minutes until she calmed down. . . . I am right handed and I do everything with my right hand. My right arm is stronger than my left arm. . . .

Later he denied it, claiming his admission was for the purpose of moving forward with this procedure. Following the removal of the mother's oldest child, both of these parents attended a series of counseling sessions and classes.

A day after this child's birth, the State filed an application for order of temporary removal of the child, and the juvenile referee ordered a peace officer remove the child from her parents' care and that she be placed under the supervision of the Department of Human Services for placement in foster care. No finding was made in the removal order that any reasonable efforts had been made to prevent the removal.

On November 1, 1989, a hearing was held to determine whether the child was a child in need of assistance. On November 20, 1989, the juvenile referee entered an order finding the child to be a child in need of assistance because the child's father is imminently likely to abuse or neglect her, and the child's mother is imminently likely to neglect the child, and both parents do not appear able to exercise a reasonable degree of care in supervising the child.

The court determined the basis for removal was the father's alleged injury of the other child. The court also found that despite the parents' participation in extensive parenting services, they have shown little or no improvement.

At this November 20, 1989 hearing, there was no showing (1) that reasonable services had been offered to reunite this family, (2) what reasonable services were necessary to reunite this family, or (3) that reasonable services would not reunite this family.

At the time of the November hearing, the father had made his statement about the child's injury. He also had worked with a number of persons who had varying opinions about the father. We look at all these opinions because it is important to us to identify the father's problem and understand what the State is attempting to correct. The question is, what is it about this man that causes him to be a threat to children? The only evidence we have as to the circumstances surrounding the injury comes from the father's own statement. This statement would indicate the injury was the result of carelessness rather than a deliberate attempt to hurt the child. In assessing the father's behavior patterns, we give considerable weight to those psychiatric evaluations that are in the record.

On April 19, 1988, the father was examined at the Black Hawk-Grundy Mental Health Center by Robert E. Pucelik, MD,

psychiatrist. Pucelik took a medical and social history, and had the benefit of records of earlier psychiatric evaluations. His treatment recommendations were:

> Review of this man's record indicate many previous psychiatric evaluations and evaluations for possible involvement in therapy. All of these evaluations indicate that they feel that this man with his present personality would not benefit from any insight-oriented psychotherapy. He will respond to very concrete directions without an apparent problem. At this point in time, C. does not indicate any problems which he feels that could be addressed. I agree with him. I have asked him to return to Center to complete an MMPI and he was agreeable. I did not see any medical problems at this time that need to be addressed. Essentially I did not see the need at this time for hospitalization, medications, return to the Center for involvement with a therapist or any psychiatric followup. I could see him benefiting from family therapy with the Quakerdale Family Service. He will also continue under probation with Sandy Brockney being his probation officer. There will also be continued supervision by Juvenile Court Services and Department of Human Services. I do not see this man as being a threat himself or others. I did not see anything during the interview today or in reading his past reports which indicates any physical assaultiveness. I believe that C. would abide by the rules imposed by the court and DHS.

On January 8, 1990, the father went back to the psychiatrist for another psychiatric evaluation. In that instant, Pucelik rendered the following treatment plan and recommendations:

> No return appointments have been scheduled to this Center. There appears to be continuing conflict in the relationship between C. and G., however, I do believe that C. is showing a little more insight into the problems in the relationship and parenting problems and is willing to make an effort to correct these deficiencies. He expressed at some length a great deal of anger and frustration concerning G.'s behavior and lack of

> motivation. Again, this family is extremely unstable and there is the distinct possibility that C. could all of a sudden leave and go to Dallas, Texas with his mother. I did ask C. to discuss his feelings concerning the problems with G. and seek further counseling as to what his options are.
>
> No further return appointments were made to this Center.

The psychiatrist does not identify the father as a potential child abuser.

These parents, who have lived most of their lives at the poverty level, are deficient in some areas. They have, however, made a genuine effort to get their problems worked out. They attended nearly eighty of the therapy and counseling sessions in Iowa from early 1988 through May 1990. In April 1990 the parents told the caseworker and the family therapist they were moving to Texas in May to find employment. The caseworker and the therapist had discussions with the parents about what the parents needed to do before Iowa would transfer the child to Texas. In May 1990 the parents moved to Texas where the father had family and found work. After their move to Texas, they were unable to visit with their daughter. In a letter to the parents dated June 27, 1990, Iowa reestablished the following criteria:

> 1. Establish stable employment,[1]
> 2. Provide documentation from your employer proving your employment,

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1. The father did obtain stable employment. However, stable employment should not be a requirement for the return of a child.

3. Maintain weekly contact with the Iowa Department of Human Services worker,
4. Contact the Texas Department of Human Services in Dallas and become involved in parenting classes, and
5. Establish a stable home environment.

The father found employment. The parents sent a copy of the father's pay stub for the pay period ending June 30, 1990. The mother maintained weekly contact with the Iowa Department of Human Services worker. The parents established a home in July 1990. While in Texas, the parents attended parenting classes. The classes were offered on six consecutive Tuesday evenings for an hour and one-half. The parents were on time for the sessions and participated in the group discussions in an appropriate manner. They were both determined to successfully complete the program.

On request of the Iowa Department of Human Services, the Texas Department of Human Services ordered an investigation of the parents' Texas home. The investigator reported the father was employed, the home, an apartment, was clean and adequate but small. The mother was not employed outside the home. The parents had done certain things to baby-proof their home. Despite a fairly favorable report, that worker did not recommend placement of this child in the parental home at this time because (1) the issue of the child's injury had not been resolved, (2) the parents had not been able to visit with the child since they moved to Texas, and (3) the parents were having

another baby in several months, and it would not be in the best interests of this child to be placed in a household that is trying to adjust to a new baby. The report was dated September 18, 1990.

On September 20, 1990, the State filed a petition to terminate parental rights. By the time of hearing, their youngest child had been born and had been living with the parents without incident. After hearing, the juvenile court entered an order terminating parental rights and found:

> This conclusion is based on the father's unwillingness to embrace fully his responsibility in injuring the parties' other child, as evidenced by his willingness to admit only in 'order to get this over with' and the mother's apprehension and unwillingness to allow the father to remain alone with the new baby for any substantial length of time. She, probably better than anyone else associated with the case, knows Charles' potential for losing control of his emotions and resulting potential injury to a child, and she feels uncomfortable in leaving him alone with their child.
>
> Additionally, the Court is not unmindful that this child has been separated from her parents for over eighteen months and that the parents chose to move to Texas, placing themselves in a position where they could not maintain the critical close relationship between parents and child necessary to form parent and child bonding.
>
> Although the evidence discloses that the mother appears to have accepted the fact that the father caused the injury to their other child, and even though she was complicit (sic) in denying this child appropriate medical care, she seems to be taking such appropriate steps as are available to her in protecting her new born child, the Court cannot, however, return this child to her without exposing the child to potential harm from the father.

> It is simply unrealistic to believe that the mother can be expected to be present all of the time to assure that the father acts appropriately with his child.

Termination of parental rights was granted under Iowa Code section 232.116(1)(c) (1989 Supp.). The question is whether the State has proved by clear and convincing evidence that:

> Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstances which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.
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> Iowa Code § 232.116(1)(c)(2) (1989 Supp.)

Our examination of the evidence does not convince us the State has met its burden. The father does not have a profile of a child abuser. While there is evidence he caused injury to a child through carelessness, there is no evidence he intentionally hurt a child. The father has participated in extensive parenting and counseling sessions. He is not particularly intelligent. He has generally lived at the poverty line. He becomes frustrated about the course his life is taking, and he becomes frustrated with the mother of these children. He has, however, obtained employment, even though it required a change in geography. He has matured since the incident with the other child. There are, of course, no guarantees this man will never hurt one of his children. But no parent comes with a guarantee he or she will not hurt his or her child. This father's evaluations have not

identified him as a person who has a propensity for assaultive behavior. This is more assurance than most parents can provide. No parents are perfect. We must judge this family by a realistic yardstick given their abilities and station in life. Because they are in the system, we cannot expect to cure all of their parenting deficiencies. They will always have some problems (like all parents do).

The State has also relied on the lack of contact between the parents and the child, and the fact the child is young and adoptable to support its position. We remind the State these were not factors that led to the child's removal, and we question the relevance of these factors to the ground under which the State sought termination. We recognize the need for continual and substantial contacts between parent and child when children are in foster care. But we also have to be realistic in looking at why these parents did not have these contacts after they moved to Texas. The parents moved to Texas for a legitimate reason--to find employment. They made arrangements with the Iowa Department of Human Services before they left to set up provisions for the child to come to Texas. They went to classes in Texas, they contacted the Texas Department of Human Services, they remained in contact with the Iowa Department of Human Services. These people are poor. Even though the father is now employed, his income

is little more than the family needs to meet its basic needs. The family did not have the money to make frequent trips and phone calls to Iowa.

We recognize the child is young and easily adoptable. There obviously is an adoptive home that may offer her substantially more advantages than her current parents can. But the purpose of a termination proceeding is not to move children to the best homes. Nor is it the purpose of a termination proceeding to remove children from homes of the poor and place the children with those who are more privileged and affluent.

We remand to the trial court to make orders to place the child in Texas and transfer the matter to the Texas courts. Efforts must be made to reunite this family.

REVERSED AND REMANDED.