FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF L.A.P.,)
A Child,
)
D.A.P., Natural Father,) 8-332
88-447
Appellant.

245

Appeal from the Iowa District (Juvenile) Court for Woodbury County (J3832), Brian L. Michaelson, Juvenile Referee.

The father of a child appeals from the juvenile court order terminating his parental rights. AFFIRMED.

Francis Lee Goodwin, Sioux City, for appellant father.

Thomas J. Miller, Attorney General of Iowa, and Kathrine S. Miller-Todd, Assistant Attorney General, for the appellee State.

Rosemary Sheehan, guardian ad litem, Sioux City, for the child.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

Under review here is the appropriateness of the Woodbury County Juvenile Court's order terminating the parental rights of D.P. over his three-year-old son L.A.P. D.P. contends that the State failed to prove by clear and convincing evidence the termination of his parental rights was necessary. We affirm the juvenile court's decision.

I. L.A.P. was born in March of 1985. His parents, D.P. and J.P., were married at the time of his birth; they remain legally married, although have not lived together for some time.

L.A.P. lived with his parents until December of 1985 when he was removed from their custody. The basis for removal was neglect of the child by the parents who left the child unattended for periods of time, and instability within the family framework caused by marital difficulties. In January of 1986, L.A.P. was adjudicated to be a child in need of assistance and was placed in foster care, where he has since remained.

After his removal from his parents home it was determined L.A.P. exhibited a considerable delay in numerous aspects of his development. During ensuing months of foster care, L.A.P. made substantial gains in his development. His progression clearly corresponded with stimulation provided by his foster family.

From the beginning of their marriage J.P. and D.P. experienced problems. They first received marital counseling in the spring of 1985. Following the filing of the child in need of assistance petition, numerous services were offered them. These services included parenting classes, individual counseling, psychological services, homemaker services, and further marriage counseling. The family relationship did not improve.

J.P. consistently failed to follow through with the services offered. She was inconsistent with her visitation at L.A.P., either leaving the visits early or not showing up at all. The last time J.P. saw L.A.P. was in February of 1986. J.P. has a background of emotional problems, including a suicide attempt following the emergency removal of L.A.P. She also has an extensive criminal arrest record for prostitution, shoplifting, and disturbing the peace, and she is currently serving a two-year sentence for third-degree theft.

On the other hand, the appellant, D.P., has shown greater consistency in following through with court ordered requirements. Psychiatric evaluations as well as status reports filed in conjunction with this matter reveal D.P. has demonstrated genuine love and affection for L.A.P. D.P. attended most of the visitation sessions, and had made such strides that beginning in March of 1987, visitation with L.A.P. was increased to three times per week in D.P.'s

home. In late June, D.P. began to miss visitation. During June and July, D.P. missed eleven scheduled visits at which time visitation was terminated. D.P. has not visited with L.A.P. since June 23, 1987, and had no contact with the Department of Human Services from that time until October of 1987. D.P. has a minimal criminal record, predominantly traffic offenses; but has experienced emotional problems which lead to inpatient psychiatric treatment for depression in the spring of 1986.

The juvenile court terminated the parental rights of both parents, relying on the grounds stated in former Iowa Code section 232.116(5), now section 232.116(1)(e) of the 1987 Code as amended. The statute permits termination if the juvenile court finds that all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.
>
> (3) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The father has appealed from the termination order. The mother, J.P., has not appealed. D.P. does not dispute that L.A.P. has been adjudicated a child in need of assistance and custody of him has been transferred from the parents for the requisite period of time. The father

contends the State has not shown by clear and convincing evidence L.A.P. cannot be returned to his custody.

On appeal, we review parent-child terminations de novo. In Interest of D.T., 418 N.W.2d 355 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Central to a determination of this nature are the interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has a duty to see that every child receives minimally adequate care and treatment and will intercede when parents abdicate their responsibility. Interest of Dameron, 306 N.W.2d at 745. The State may revoke the rights of parents if the allegations are proven by clear and convincing evidence. Iowa Code † 232.116(1)(e) (Supp. 1987).

Essential to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight may be gleened as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). Not only may the court look at the past behavior of the parent, but it is an important factor. In the Interest of M.H., 367 N.W.2d 275 (Iowa App. 1985). We look at the child's long range and immediate interests and consider what the future could hold for the child if returned to the parent.

Id. We may obtain insight for this determination from evidence of the parent's past performance, for that behavior may be indicative of the quality of the future care that parent is capable of providing. Interest of Dameron, 306 N.W.2d at 745. Iowa statutory termination provisions have been construed as preventative as well as remedial, and thus, require action to prevent possible harm to a child before that harm may occur. Interest of Dameron, 306 N.W.2d at 745.

Our careful review of the record convinces us the termination order of the juvenile court should be affirmed. Although D.P. has expressed his love and affection for his child, as well as a desire to someday attain custody, the record reveals he is not emotionally or intellectually capable of providing the child with a suitable environment, nor does such a day appear imminent.

We determine the juvenile court had sufficient evidence to find that L.A.P. would suffer harm due to D.P.'s neglect and lack of supervision.

The reason behind L.A.P.'s original emergency removal was lack of proper supervision by his parents. The record indicates D.P. and J.P. admitted leaving the child unattended for certain periods of time. The duration and circumstances surrounding these incidents is not clear from the record, but the times the child was left alone occurred often enough and for a long enough period to prompt a

neighbor to contact the Department of Human Services regarding the problem.

Even of a greater concern to this court in determining the best interests of L.A.P., both immediate and future, is D.P.'s lack of parenting skills and his inability to appreciably improve those skills, despite a number of educational opportunities.

After his removal, L.A.P. was evaluated, resulting in a determination he was developmentally delayed by about three-months and displayed significant deficits in all areas. L.A.P. showed rapid development in skills shortly after placement in foster care, including interactions with the foster family members, smiling, rolling over, and crawling. When interviewed by social workers, neither D.P. or J.P. could detail the child's development in areas such as sitting up and rolling over. D.P. and J.P. stated on more than one occasion they did not know what L.A.P. should be doing because they did not remember being his age. The record clearly indicates L.A.P. was not receiving proper care prior to his removal.

L.A.P. will continue to have special developmental needs, which will require special parenting skills. L.A.P.'s progress may be slow and demand patience and time. L.A.P.'s custodial parent would need to understand child development. The appellant has not displayed these requisite qualities or even the potential for attaining

such skills. We agree appellant has made progress through his cooperation with court-required training. However, the record indicates his progress has been sluggish at best and marred by periods of failure to adhere to court requirements. He has missed parenting classes and visitation without any apparent reason. D.P. testified during the juvenile court proceeding the reason he began to skip visitations was he became "depressed" and had "given up on the whole deal." He stated during the juvenile court hearing:

> Q. David, putting your own personal feelings aside, just put them on the shelf, do you think [the child] would be better off being raised by you or better off being raised by the [foster family], thinking of [the child] only?
>
> A. By the [foster family].

This candid answer by appellant indicates he realizes others are better equipped to cope with the special needs which L.A.P. will require.

The Iowa Supreme Court has held a child should not be forced to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). He or she need not endlessly await the maturity of his or her natural parents. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Here appellant has made progress, but it has not been satisfactory. He admits he is not now ready to have custody of L.A.P., but hopes to be able to in the future. However, there is no evidence in the record

indicating appellant will be capable of taking over sole custody in the near future or ever for that matter.

Our decision in this case is not an easy one and we do not make it lightly. It is obvious from the record D.P.'s marital difficulties were part of the reason he had difficulty complying with the case plan. But we do not agree D.P. is being penalized for J.P.'s actions. Clear and convincing evidence supports the conclusion D.P. has never been capable of caring for his child and there is no indication the situation will change. The child cannot be returned to his father's custody without being subjected to the potential neglect our statutes are designed to protect against.

AFFIRMED.