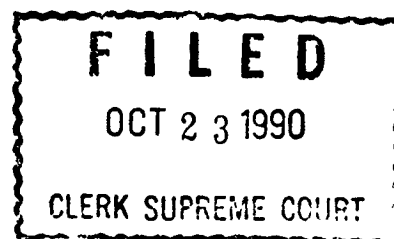


IN THE COURT OF APPEALS OF IOWA

No. 0-481 / 90-608



IN THE INTEREST OF D.P., A Child,
V.K.S., Mother,
Appellant.

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Appeal from the Iowa District Court for Jasper County,
Thomas W. Mott, District Associate Judge.

Mother appeals the termination of her parental rights.
REVERSED AND REMANDED.

John E. Billingsley of Walker, Knopf & Billingsley,
Newton, for appellant mother.

Thomas J. Miller, Attorney General, Gordon E. Allen,
Deputy Attorney General, and Judy Sheirbon, Assistant
Attorney General, for appellee State.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The difficult question this case presents is whether there is clear and convincing evidence supporting the trial court's decision to terminate a mother's parental rights to a male child born in February 1982.

The child came into the system because the mother reported herself and sought assistance. The child, who suffers an attention deficit disorder, manifests a strong desire to return to his mother's care and not have his parental rights terminated. There is a second child in the family, a daughter two years younger. A termination of the child's parental rights will also sever his relationship with his sister.

The mother was a single parent when the child was removed. The child's father had left the family six years earlier. The mother has now remarried. The mother experienced a series of problems controlling and disciplining the child. She requested assistance from the department in addressing the problem, and as a result of her self-reporting was charged with child abuse. Apparently the only physical injury the child suffered was minor bruising as the result of some spankings. The child was found to be a child in need of assistance and was placed in foster care where he was finally controlled by the use of various discipline techniques, including restraint. The child developed an excellent relationship with the foster father, who ultimately was able to control

him without restraints. Unfortunately, the foster father, a minister, was transferred to another state and that foster care relationship was terminated. The child was placed in a second foster home. His problems have in part stabilized, although the child continues to be challenging and not consistent in his behavior. He is intelligent and is doing well in school.

The State contends the mother's parental rights should be terminated because the mother's and child's personality disorders are exaggerated when they are together, and she treats this child differently than she treats her daughter. The State also contends the mother does not use appropriate discipline techniques when working with the child, the mother's responses to hypothetical questions regarding problems with the children are not appropriate, and the mother has exhibited inappropriate behavior in confrontations with neighbors.

The mother argues her contact with the child since placement has been unduly restricted. She contends she has received a series of mixed signals on expected parenting techniques from some fourteen social workers and therapists who have worked with her and the child. She says their techniques and goals have not been realistic. She argues there is a serious question as to the child's adoptability. She also points to the fact that there is

general agreement she has successfully parented her daughter.

The child suffers from an attention disorder or hyperactivity. The mother reported her problems and has cooperated with the Department of Human Services and the juvenile court system. She currently has undertaken a regular series of counseling sessions with the pastor of her church.

The child's problems have improved, in part, because of the parenting techniques including the use of physical restraint, in the foster home. Obviously the child also has grown older and matured, which has probably also contributed to a decrease in the child's hyperactivity. However, visits between the mother and child have not been successful.

The stepfather has made an adjustment to the mother's daughter and is better able to control the two children than the mother. A major problem as defined by the trial court is that the mother's intelligence level is below normal, and she is not able to totally comprehend the child's problems. If parental rights are not terminated, she obviously will need continual assistance with parenting. The mother's limited intellectual capacity

prevents her from assimilating the parenting techniques the State has determined are necessary for successful parenting.¹

We do not find the evidence here meets the clear and convincing standard. See Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). We have a concern too that termination of this mother's parental rights might discourage self-reporting and requests by parents for help from the department, if, despite self-reporting and cooperation by the parent, parental rights were terminated.

Even if these facts were sufficient to support a finding there is clear and convincing evidence the mother's parental rights should be terminated, we do not find it in the best interest of this eight-year-old child to terminate his parental rights when he is clear that he does not wish these rights to be terminated, particularly when to do so will not only terminate his relationship with his mother but also with his younger sister.

We recognize involuntary termination of parental rights is an area we approach with little history or direction. It is an area of the law that has really come into being in

1. It is suggested many retarded parents unjustly lose their children because of a prejudicial enforcement of child neglect and dependency laws. See Roos The Law and Mentally Retarded Persons: An Uncertain Future, 31 Stan. L. Rev. 613, 623 (1979); Note, Retarded Persons in Neglect Proceedings: The Erroneous Assumption of Parental Inadequacy, 31 Stan. L. Rev. 785, 786 (1979).

the past decade as a result of recognition of children's rights and an attitude that longer foster care needs to be replaced by termination and adoption. See Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence, 20 Fam. L.Q. 233, 234-36 (1986). Termination carries with it no guarantees of adoption, particularly for this child who is older and suffers a series of problems.

Adoption carries with it no guarantee for success.² Even if the child is adopted, there will be longing for the natural family and even more so here where the child has bonded with his mother and sister, is nine years old and does not want these bonds severed. We need also to focus on what right the child has to retain these bonds, and be aware that adopted children continue to have need for their biological ties. Weenstein, Study of Foster Care Children, 28 Stan. L. Rev. 623, 627 (1976).

We reverse the termination. We remand to the trial court to utilize reasonable efforts in an attempt to reunite this family. There is a need to treat this family as a unit rather than separately. This child needs more contact with his mother, and structured activities need to

2. For a discussion of the problems of adoptees see A. Sorosky, A. Baran, R. Pannor The Adoption Triangle (1978); Identity Development in Adopted Children, 47 Pediatrics 948 (1971).

be made available for the mother and son on a one-to-one basis.

REVERSED AND REMANDED.