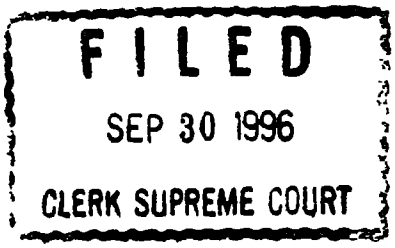
IN THE COURT OF APPEALS OF IOWA

No. 6-556 / 96-535



IN THE INTEREST OF K.D., Minor Child,

C.B.D., Father,
Appellant,

V.S.C., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

The father and mother of minor child K.D. appeal a district court order terminating their parental rights. **AFFIRMED.**

Elizabeth Rosenbaum, Sioux City, for appellant father.

John S. Moeller of O'Brien, Galvin & Moeller, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Marleen J. Loftus, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Cady and Vogel, JJ.

SACKETT, C.J.

Appellants Bruce and Valerie are the birth parents of Kyle, born in March 1987. Kyle was in the custody of his father when he was removed from his care in April 1993. In February 1996, the juvenile court terminated the parental rights of both birth parents. They both appeal contending (1) there is not clear and convincing evidence that supports a finding Kyle's parental rights should have been terminated, and (2) the State failed to make reasonable efforts to reunite them with their son. We affirm.

We review de novo giving weight to the findings of the juvenile court, particularly with respect to the findings as to the credibility of witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Bruce and Valerie, who never married, separated for the last time in 1989. The history of their relationship is confusing. They both have lived in several states. They ultimately came to Iowa with Kyle. Valerie moved from Iowa to Indiana. When she moved, Kyle was left in his father's custody.

In April 1993, there were reports to the Iowa Department of Human Services that Bruce and Valerie had abused Kyle. The information the Department received from a confidential source indicated a videotape was made in Michigan when Kyle was about two. In the tape, Bruce was to have instructed Kyle and Valerie to play

with Kyle's penis. At the time the allegations were made, Bruce was living with another woman and additional problems surfaced through the break-up of that relationship.

When the Department learned of the alleged existence of the tape,[1] they tried unsuccessfully to contact Bruce. The Department subsequently contacted Kyle at school where he attended kindergarten. He was interrogated and made no statements adverse to his father. His kindergarten teacher was questioned and reported Kyle's attendance at school was good, that he enjoyed school and being with the other children, and that occasionally he was anxious and hyperactive and could be physical in his behavior.

There were additional allegations made by the unnamed reporter. A worker again questioned Kyle at school. Kyle made no allegations against his father. He appeared to be well-nourished. After a visit, Bruce agreed to place Kyle with his sister, Kyle's aunt.

The Department then received a report from who they termed a "reliable collateral source" that indicated Kyle had told someone his father engaged in inappropriate sexual activity with him. Kyle was interviewed at the Child Protection

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[1] There is reference in a written report of a worker viewing a tape that came from Valerie Apparently the tape shows Kyle's third birthday party, including a party at a pizza parlor There is a segment of the tape where Kyle is running around the house with no pants on He carries a toy saw and Bruce is allegedly heard on the tape saying, "Cut off your penis and then your mother will have the girl she wants."

Center and, according to reports, indicated during the interview his father had tried to have sex with him, and his father has sex with his wiener and lays on top of people. Drawings and anatomically correct dolls also were used in the interview. A medical examination came to the following impression, "This examination is suspicious for abuse."

A petition to have Kyle found a child in need of assistance was filed. Throughout Bruce has denied the allegations of sexual abuse. He contends his son has inappropriately touched his penis and made contact with the dog and Bruce told him he would pull his penis off if he continued the activity. Bruce admits this was inappropriate behavior, but contends it was not sexual abuse.

During the course of these proceedings, Kyle has lived in his aunt's home, has been at the Crittendon Center twice, has been an inpatient at the Marian Health Center's Child Psychiatric Unit, and has been in two foster homes. At times during these placements, Kyle has exhibited hyperactive behavior, and he was difficult to control and did not relate well with the staff and other children in the programs. When Bruce visited, Kyle was happy to see him and on many occasions the visitations went well. There also was evidence Kyle exhibited extreme affection for his father and behaved poorly after his father's visits. Visitation ultimately was

supervised because of claims that Kyle engaged in negative behavior after seeing his father.[2]

Valerie has basically been absent from Kyle's life. She advanced she was forced to leave Kyle with his father because of Bruce's threatened violence. She also has contended Bruce engaged in inappropriate sexual behavior. Even after Kyle was removed from Bruce's care, Valerie's involvement was minimal. However, during the time Kyle was at the Crittendon Center, Valerie and her husband and other children came to see him. Kyle seemed to get along well with her.

After Kyle's removal, Bruce maintained all visitations. He refused to admit he had abused Kyle and disagreed with the curriculum of a parent survival course he attended. He did attend a number of treatment programs. The State contends he has not made sufficient progress. Bruce contends there is not clear and convincing evidence supporting the termination and he was not offered reasonable services to correct parenting deficiencies.

There is no evidence that Bruce specifically requested services which were not offered, nor on appeal does he specify what services would have benefitted him. We recognize he sought some help on his own and commend him for it. Bruce on appeal

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[2] Home Care Services, Inc. supervised twenty-seven scheduled visits, four of which were canceled -- three by the foster parents and Bruce canceled one. The visits were from February 17, 1994 through August 24, 1994. Home Care Services, Inc. reported Bruce and Kyle made some progress during visitation and Kyle enjoyed his visits with his father.

contends the State failed to offer him beneficial services because they had predetermined he could not be assisted.

Bruce participated in the following programs either on his own or as set by the Department: (1) Parenting Class at Boys and Girls Home (completed); (2) Sexual Abuse Perpetrator Evaluation with Catholic Charities (completed); (3) psychological evaluation with Dr. Schmitz (completed); (4) individual therapy and sexual abuse perpetrators groups at Catholic Charities (switched to therapist Dr. Michael Baker); (5) one year of supervised visits with Kyle monitored by Crittendon Cantor Parent Survival Program (discontinued because of alleged negative impact on Kyle's behavior); and (6) individual therapy with Dr. Baker (who was of the opinion there was a strong likelihood Bruce was a sexual abuse perpetrator and he ended the sessions). There is no record earlier challenges were made to the services offered. We find no basis for the challenges now made by Bruce. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). We will not reverse the juvenile court on Bruce's claim that reasonable services were not offered.

We next address whether there is clear and convincing evidence Kyle cannot be returned to Bruce. There was a finding that Bruce had abused his son. Our review of the evidence causes us to agree with this finding. Bruce has denied that he abused Kyle. The State urges we should consider this denial in assessing the issue of termination. We do not do so. The evidence from the service providers shows that

Bruce still presents a threat to Kyle. The State has proved by clear and convincing evidence that despite Bruce's participation in a number of programs and interest in Kyle during the course of these proceedings, Kyle cannot be returned to Bruce's care. To do so would place Kyle in danger of further abuse. *See In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). We affirm the termination of his parental rights.

Valerie contends there is not clear and convincing evidence supporting the termination of her parental rights. She further contends it was error for the juvenile judge to terminate her parental rights under the code sections utilized. She additionally contends the Iowa courts failed to offer her reasonable services to allow her to obtain custody of Kyle.

An initial report from Indiana found no reason Valerie would be unable to assume custody of Kyle. Valerie has had little follow-up. She claims she has few resources and consequently she has been unable to come to hearings and schedule visits. There is, however, little other evidence of interest. There were few letters and she failed to take advantage of opportunities for phone calls to Kyle. Valerie makes claims for services now that should have been made earlier. A request for services must be made at the time they are needed. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). We find no basis to reverse the juvenile court on this ground.

The next question is whether there is clear and convincing evidence supporting the termination of the mother's parental rights. The juvenile court found there was

clear and convincing evidence Kyle had been abandoned or deserted by Valerie and terminated her parental rights under Iowa Code section 232.116(1)(b) (1995).

Valerie argues she did not intend to abandon Kyle. We disagree. Valerie left Kyle and moved to another state. She made little or no effort to be a part of her son's life. She has had little contact with him during the course of these proceedings. We find no record of any financial contributions despite an effort to collect child support in Indiana. We affirm the juvenile court on this issue.

While the juvenile court found Kyle adoptable, there is little evidence supporting this conclusion. He suffers the detachment that occurs when entrusted to a number of care givers. He is attached to his birth father. There is strong evidence that Kyle has made substantial improvement in his last foster home and he is loved there and bonded, and he would have problems if returned to an unstable lifestyle. There is no indication Kyle's current foster family is interested in adopting him. We do not assume termination guarantees adoption. *In re B.H.*, 517 N.W.2d 715, 171 (Iowa App. 1994). The guardian ad litem shall monitor and seek a permanent placement for this child.

AFFIRMED.