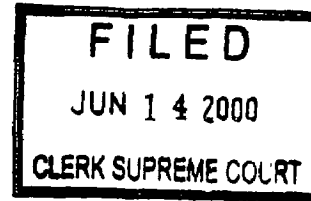


IN THE COURT OF APPEALS OF IOWA

No. 0-272 / 99-1537
Filed June 14, 2000



**IN THE INTEREST OF
F.R., A Minor Child,**

**J.B., Father,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Court Judge.

Father appeals from a child in need of assistance order placing his
daughter in foster care. **APPEAL DISMISSED.**

J. B., Ottumwa, appellant, pro se.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney
General, and Victoria Siegel, Assistant County Attorney, for appellee-State.

Thomas Kintigh, Ottumwa, guardian ad litem for minor child.

H. Michael Neary, Ottumwa, for mother.

Considered by Strelt, P.J., and Zimmer and Hecht, JJ.

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HECHT, J.

John B. appeals from a child in need of assistance order, placing his daughter in foster care. He contends the juvenile court erred in transferring legal custody of the child to the department of human services rather than transferring legal custody to him. For the reasons stated below, we dismiss John's appeal.

I. Factual Background and Proceedings. On December 17, 1998, John filed an action in order to establish paternity of Joanna B.'s unborn child. Joanna gave birth to Faith on December 23, 1998, and named Brian R. as the father on the child's birth certificate. On March 17, 1999, Joanna tested positive for cocaine and methamphetamine while she was breastfeeding Faith. The district court entered a temporary removal order and the baby was placed in foster care. The state filed a child in need of assistance ("CINA") petition on March 19, 1999. The petition stated paternity of Faith was unknown but listed two putative fathers, Brian R. and John B., and alleged paternity was being established.

On April 23, 1999, the district court held a hearing on the CINA petition. John entered a report into evidence from Identity Genetics Inc. concluding John was Faith's biological father. The district court adjudicated Faith to be a child in need of assistance pursuant to section 232.2(6)(c)(2) and placed temporary legal custody with the department of human services ("DHS") for placement in foster care. The district court granted John supervised visits with Faith.

The district court held a dispositional hearing on June 11 and 25, 1999. John had completed a home study with DHS, parenting classes, and a psychological evaluation. He had exercised six one-hour supervised visits with

Faith. The district court found he had a clean apartment, had purchased the necessary items to take care of an infant, was employed full-time as a plumbing contractor, and was attending college. The district court expressed concerns about John's criminal record, history of alcohol and drug abuse, and ability to protect Faith from her mother, and her mother's friends and family. On July 13, 1999, the district court ordered legal custody of Faith remain with DHS and continued her placement with the foster family. The district court granted John continued regular visitation with Faith.

John filed a 179(b) motion requesting the district court grant him legal custody of his daughter. The district court overruled his motion on August 25, 1999, and John appealed. During the pendency of this appeal, DHS stated in a case permanency plan review on November 13, 1999, the visitation time between Faith and John was to be increased with a goal of full-time placement with John. The State indicated in a motion to supplement the record DHS intended to recommend permanent placement with John at a review hearing on December 17, 1999. A December 20, 1999, order of the district court granted legal custody of Faith to John.

II. Mootness. The State contends this case is moot and the appeal must therefore be dismissed. Although neither party moved to have the December 20, 1999, order made part of our record on appeal, we may consider matters that are technically outside of the record for the limited purpose of establishing or countering an issue of mootness. See *In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992).

A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent. *Sear v. Clayton County Zoning Bd.*, 590 N.W.2d 512, 514 (Iowa 1999). "Our test of mootness is whether an opinion would be of force or effect in the underlying controversy." *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 540 (Iowa 1997). The question we must ask is "will our decision in this case have any practical legal effect upon an existing controversy?" *Id.* (quoting 5 Am. Jur. 2d *Appellate Review* § 642, at 321 (1995)). As of December 20, 1999, John has legal custody of his daughter, Faith. There is no longer a controversy in this case and any issues addressed or resolved in this appeal would have no effect on the order of the district court from which John appeals.

John is correct in asserting, however, we may decide an otherwise moot case if matters of public importance are presented and the problem is likely to recur. *See Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 679 (Iowa 1998). John argues this matter is one of public interest that is likely to recur and there is a need for guidance on the issue because the "reality of children born out of wedlock and the accompanying complexities of rights [to] legal custody is becoming more and more prevalent in today's society." While the issue presented to us on appeal is one of great personal importance to John and his daughter, it is not an issue that extends any farther than the particular facts of this case. Accordingly, we determine this case is moot and dismiss the appeal.

APPEAL DISMISSED.