

IN THE COURT OF APPEALS OF IOWA

No. 6-407 / 06-0625

Filed June 28, 2006

**IN THE INTEREST OF D.J., a/k/a D.H.,
Minor Child,**

H.J., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe Smith, District Associate Judge.

Mother appeals from the juvenile court's ruling allowing child to have eye surgery. **REVERSED AND REMANDED.**

Christopher Kragnes, Des Moines, for appellant mother.

Cathleen Siebrecht, Des Moines, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenoweth Assistant County Attorney, for appellee State.

Jessica Miskimins of the Youth Law Center, for minor child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.**I. Background Facts and Proceedings**

Heather is the mother of D.J., born in December 1996. D.J. was removed from Heather's care on May 19, 2005, and adjudicated a child in need of assistance on June 1, 2005. D.J. suffers from familial cataracts. In February 2006 D.J.'s court-appointed special advocate (CASA) urged the court to authorize cataract surgery on D.J.'s right eye. Both the State and D.J.'s guardian ad litem (GAL) agreed. Heather, however, opposed the surgery.

At the time of hearing, eyeglasses corrected D.J.'s sight to 20/70 in his right eye and 20/40 in his left eye. Eyeglasses will not correct his vision to 20/20. Further, D.J. has been experiencing some problems in school. It is not clear whether the difficulties stem from his vision or some other condition.

The surgery the State, CASA, and GAL propose carries some risks including blindness, glaucoma, scarring, and retinal detachment. Death resulting from the anesthesia is also a possible risk. The benefits, however, include better vision and depth perception, reduced glare, and improved ability to participate in sports and outdoor activities.

Heather does not give a reason for refusing to allow D.J. to have the surgery. Both pediatric ophthalmologists who testified at the hearing stated that at this time, either the decision to have the surgery or the decision to not have the surgery would be reasonable. Both also hesitated to make a recommendation in D.J.'s case without further examination. The juvenile court determined the risks involved with the surgery are minute. It ordered that D.J. be

permitted to have surgery on his left eye and that surgery on the right eye should be performed if recommended by the attending ophthalmologist.¹

II. Standard of Review

We review de novo. *In re Karwath*, 199 N.W.2d 147, 148 (Iowa 1972) (reviewing de novo juvenile court order for removal of children's tonsils).

III. Merits

Heather gives no reason for her refusal to give D.J. permission to have surgery. She maintains only that it is her right to make medical decisions that are not life-threatening. The State bases its argument on D.J.'s right to education and its duty to provide that education. It contends surgery is necessary because the cataracts are interfering with D.J.'s ability to participate in class. In the alternative, the State requests a remand until surgery is actually recommended by an attending ophthalmologist.

Generally, there is no justification for the State to interfere in private family life. *In re K.M.*, 653 N.W.2d 602, 607 (Iowa 2002). Nor is there any justification for the State to examine a parent's judgment when she makes a decision that affects the well being of her child. *Id.* However, a parent's interest in the integrity of the family may be forfeited by certain parental conduct. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). For example, if a parent fails to provide adequate care and treatment, the State will intervene. *Id.*

Though it is somewhat tangential, this case is not without precedent. In *In re Karwath*, a father refused to allow his three children to have their tonsils

¹ No reason appears in the record for the discrepancy between the recommendation given by the State, CASA, and GAL that surgery be performed on the right eye and the court order authorizing surgery on the left eye.

removed. *Karwath*, 199 N.W.2d at 148-49. Like D.J., the children had been removed from the parents. *Id.* at 148. Like Heather, their father argued the children's condition was not immediately life-threatening.² *Id.* at 149-50. The supreme court concluded, however, that such a showing was unnecessary. *Id.* at 150. By weighing the reasonableness of the father's objections to the surgery against the reasons for believing surgery was necessary, the court concluded the children's best interest compelled surgery. *Id.*

In this case the children are admittedly dependent upon the State for medical care. The evidence shows they need it. The State has duty and power to provide it. . . . Our paramount concern for the best interests and welfare of the children overrides the father's contention that absolute medical certitude of necessity and success should precede surgery. Nor is it required that a medical crisis be shown constituting an immediate threat to life and limb.

Where the best interests and welfare of children in care and custody of the State reasonably require medical treatment opposed by a parent, residual parental rights cannot be invoked to prevent it.

Id.

Heather does not make an actual objection to the surgery itself, but instead relies on her right as a parent to make medical decisions. As previously stated, this right is not absolute. The reasons the State, CASA, and GAL give in favor of surgery are compelling. We hesitate to order surgery, however, when medical testimony is so ambivalent. Neither ophthalmologist actually recommended D.J. have surgery. One stated she did not have a complete medical history and that a treating physician would need more information to make a recommendation as to surgery. She also stated that either decision, to

² The father also asserted religious beliefs to justify his refusal. *Id.* at 149.

have the surgery or not have the surgery, would be reasonable. In addition, she gave the following testimony:

Q. Do you have an opinion with a reasonable degree of medical certainty, as to whether [D.J.] could be benefit [sic] by surgery at this time? A. You know, it's not a simple yes/no answer.

....

A. . . . You know, the other issue is, what do you mean by, would this help him? If the cataract in his right eye came out and there were no complications, which is not a given, because there's always the potential for complications, including blindness with any cataract surgery, would he, would his vision measure likely better on the charts? Would he function better? I don't know. . . .

Q. Maybe I'm simplifying it, but what I want to know is, will [D.J.] see better if his, if the eye surgery is done? Will he see better? A. I don't know. I don't know. I can't—there's not a yes or no answer to that question. If he has a blinding complication from surgery, he will see worse.

....

Q. Now, you mentioned waiting. Is there an age at which [D.J.] would have to have this surgery for a medical reason, an age by which— A. No, no. There would be no medical reason to have to have the surgery. It would be a functional reason. If you felt that it was taking the vision to a degree where it warranted doing an invasive surgery.

....

Q. Doctor, [D.J.]'s condition is not life-threatening, correct? A. Correct.

Q. You've previously stated that in terms of medically being necessary, this surgery is not medically necessary, correct? A. It is not necessary from a medical standpoint, correct.

Q. This surgery would also be considered to be an invasive surgery, correct? A. Correct.

....

Q. Should the surgery be performed, is there any guarantee that it would improve [D.J.]'s performance in school. A. No.

Q. Is there any guarantee that it will, in fact, improve his sight? A. I don't know, barring complications, it would probably improve his sight, to some degree. But if complications come, no, there is no guarantee.

....

A. . . . It's not a thing that has to be done, and it would depend upon the people making decisions for [D.J.], deciding based on the risks versus the benefit, if they felt comfortable with proceeding with surgery.

The other doctor stated he could conclude with reasonable medical certainty that D.J.'s eyesight will worsen with time. He could not say whether D.J.'s sight would improve with surgery at this time, but if surgery was postponed until D.J. was fifteen or sixteen, there may be less of a chance his sight would improve.

Q. And do you have an opinion to a reasonable degree of medical certainty that a surgery would benefit [D.J.]? A. Based on my examinations, the cataracts were significant enough that I felt that the patient's vision would improve. But, I could not tell, I cannot tell with certainty how much that it would improve.

Q. Doctor, will it cause [D.J.] a significant medical problem if he does not have the surgery at this time? A. You know, that is a very very difficult question. I have to tell you that, you know, I would like to say medicine is like, is black and white, and is like science. But a lot of it, as you know, just like [D.J.]'s case here, it's not so much black and white, and it's all—different doctors have different opinions, and there are different ways of approaching a situation like this. To answer your question, if we leave it alone, like, I'm sorry, can you repeat the last question again?

Q. Maybe I can rephrase it, doctor. Would it be just as reasonable for a parent to make the decision that [D.J.] not have the surgery or [D.J.] have the surgery? A. You know, I've actually thought about that quite a bit. In this particular case, if, you know, when I saw [D.J.] for the first time, actually, it was—I think it was a foster mom who actually brought the patient in, and the foster mom, I had the impression that he or she didn't even know that [D.J.] had the cataracts. If [D.J.] presented to me with his biological mother or father and if they said, doctor, I do not wish to take the risk, and I would like to observe, that would be reasonable, yes.

Ultimately, he thought D.J. would benefit from surgery, but stated that he would need to conduct a further examination to make a recommendation. He also stated he felt great caution needed to be taken.

Though we are not against the surgery, we hesitate to override a parent's wishes without, at the very least, a medical recommendation. Therefore, given the physicians' uncertainty and their unwillingness to offer an opinion without

further examination, we must reverse the decision of the juvenile court which authorized surgery. However, in keeping with the best interests of the child and the interest of judicial economy, we remand to the juvenile court for further medical examination of the child and possible rehearing on the matter. We do not retain jurisdiction.

REVERSED AND REMANDED.