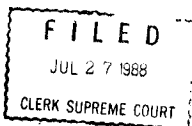


IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF A.J.H., )  
A Child, )  
J.H., Mother, )  
Appellant. )

8-171  
87-1275



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Appeal from the Iowa District Court for Polk (Juvenile)  
Court (JU 6564-14), Larry J. Eisenhauer, Juvenile Referee.

Appellant appeals two orders of the juvenile court  
granting temporary legal custody of the minor child to the  
father and setting out terms for parenting contracts.  
**AFFIRMED.**

Gary S. Gill, Des Moines, for the appellant mother.

Robert H. Laden of Hyland, Laden & Pearson, Des Moines,  
for the appellee father.

Thomas J. Miller, Attorney General of Iowa, and Charles  
K. Phillips, Assistant Attorney General, for the appellee  
State.

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

HAYDEN, J.

J.H., the mother of A.J.H., a nine-year-old boy, appeals two orders of the juvenile court. The first order gave temporary legal custody of A.J.H. to his father, G.H., and the second order set out terms for parenting contracts to be followed by J.H. and G.H. We affirm.

On August 18, 1986, the State filed a petition alleging A.J.H. was a child in need of assistance (CHINA) due to emotional distress caused by the pending dissolution of his parents' marriage. On November 10, 1986, J.H. and G.H. acknowledged, at the CHINA adjudication, they were unable to provide A.J.H. the treatment necessary to cure or alleviate his emotional problems. They therefore stipulated to his adjudication as a child in need of assistance. The State nonetheless introduced a child abuse report and a hospital evaluation report which documented A.J.H.'s problems and provided a history of the situation. The juvenile court then ordered the parents retain joint custody and the same visitation schedule as provided by order of the court in the dissolution action.

In February 1987, a dispositional hearing was held. The order issued after that hearing continued joint custody and required counseling for A.J.H. with a "neutral" therapist. Again, J.H. and G.H. agreed to these arrangements.

In August 1987 a hearing for a review of the February disposition was held. Throughout this proceeding the juve-

juvenile court prohibited the admission of evidence of incidents which occurred prior to the February hearing. On August 21st the juvenile court filed its order granting G.H. temporary legal custody of A.J.H. The order provided J.H. would have overnight visitation with A.J.H. every other weekend. J.H. promptly filed an appeal to this ruling. While this appeal was pending, the juvenile court held another hearing on September 18, 1987. This hearing was the result of J.H.'s failure to make A.J.H. available for his soccer game during J.H.'s weekend of visitation. A letter from A.J.H.'s therapist indicated soccer was an important and normal participatory activity for A.J.H. and it would be disruptive for him to miss his games every other weekend. J.H. had also, on the advice of her attorney, refused to talk to the juvenile court officer since the August 21st order. The juvenile court responded to these problems by ordering J.H. to ensure A.J.H.'s attendance at his soccer games on her weekends of visitation and by instructing J.H.'s attorney to not prohibit contact between J.H. and the juvenile court officer. The juvenile court also determined it was necessary to set out terms for parenting contracts to be followed by J.H. and G.H. J.H., who had filed a special appearance challenging the court's jurisdiction to hold this hearing, also appealed this order. This appeal was consolidated with her appeal of the August 21st order. Both appeals are before us now.

I. Jurisdiction. We address first the jurisdiction issues raised by J.H. She asserts the juvenile court lacked jurisdiction in all of the hearings held since the filing of the petition because G.H. and she have testified they have always been willing and able to provide treatment for A.J.H. J.H. therefore contends jurisdiction was not appropriate under Iowa Code section 232.2(6)(f), which provides a child in need of assistance is an unmarried child:

Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

Id. (our emphasis).

We are persuaded, however, the inability of J.H. and G.H. to provide the treatment necessary for A.J.H. was determined, as a factual matter, at the CHINA adjudication. At that hearing, both J.H. and G.H. acknowledged their inability by stipulating to the adjudication. More importantly, the State introduced a child abuse report and the report of a hospital evaluation performed on A.J.H., both of which documented A.J.H.'s emotional problems and the numerous ineffective steps taken by his parents to resolve those problems. For example, A.J.H. had been counseled and evaluated by several psychologists and at least one psychiatrist, yet nonetheless was still exper-

encing involuntary urination and bowel movements. He had also been diagnosed as having an adjustment disorder with atypical features, manifested primarily by a manner of interacting with others which appeared to have a significant schizoid quality. All of A.J.H.'s emotional problems stem from the extraordinary acrimony which has been the principal feature of the deterioration of his parents' marriage. We conclude the juvenile court had jurisdiction at the outset of this case..

J.H. also asserts the juvenile court lacked jurisdiction to issue the September 1987 order as she had already appealed the August order. Generally, timely filing of a notice of appeal places sole jurisdiction of the matter in the appellate court. See e.g., Matter of Estate of Tollefsrud, 275 N.W.2d 412, 417 (Iowa 1979). However, under the "collateral matter" exception to this rule, the trial court retains jurisdiction to proceed as to issues collateral to and not affecting the subject matter of the appeal. Id. at 418. This exception is considered to be of the greatest value in probate and domestic relations cases, although it may operate in other appropriate settings. Id. One such setting is juvenile court cases. See Matter of Welfare of C. Children, 348 N.W.2d 94, 99 (Minn. App. 1984).

In this case, the August 1987 order granted G.H. temporary legal custody of A.J.H. and set up a visitation

schedule. The subsequent order in September dealt primarily with problems which arose in the implementation of the visitation schedule. The September order did not affect the subject matter of J.H.'s appeal of the August order. We therefore conclude the juvenile court had jurisdiction to issue the September order.

II. Evidentiary Rulings. J.H. asserts the juvenile court improperly prohibited her, at the August 1987 review hearing, from introducing evidence relating to incidents which occurred prior to the February disposition hearing. She also contends the juvenile court erred in its rulings regarding the testimony of two witnesses for the State.

A review hearing should not develop into a readjudication of the initial disposition hearing. See In the Interest of Welcher, 243 N.W.2d 841, 844 (Iowa 1976). We believe this is what was avoided by the juvenile court in this case. We note J.H. had the opportunity at the disposition hearing to have all relevant and material evidence admitted. See Iowa Code § 232.99(2). She now suggests evidence of alleged spousal abuse was not admitted then because she and G.H. had stipulated to joint custody. Such evidence is now material, she reasons, because the issue before the juvenile court the review hearing was whether to give custody to G.H. We disagree with this characterization. The issue at the review hearing was whether circumstances since the disposition hearing justified

termination, modification, vacation, or substitution of the dispositional order. In any event, we find it rather difficult to square the best interests of A.J.H. with J.H.'s apparent belief the alleged spousal abuse by G.H. was not material so long as he only had joint custody. Raising these allegations at this late date seems more a reflection of the bilious nature of the parties' dissolution than of an altruistic desire to further the best interests of A.J.H.

We conclude the juvenile court was correct to disallow the introduction of evidence relating to incidents which occurred prior to the February hearing. We also find no merit in J.H.'s challenges to the court's rulings regarding the testimony of Jan Tidrick-Blue and Bruce Buchanan.

III. Sufficiency of Evidence. J.H. asserts there was insufficient evidence to support granting G.H. temporary legal custody of A.J.H. In our de novo review, we find clear and convincing evidence to support the decision of the juvenile court.

In the time between the hearing in February and the review in August, J.H. had stopped going to family therapy. Moreover, she testified she would refuse to honor any court order directing her to continue such therapy, unless she could choose the therapist. J.H. also violated a court order which required A.J.H.'s therapy to be only with Mr. Buchanan, by taking A.J.H. to see at least one

other therapist. It had earlier been determined the shuttling of A.J.H. from therapist to therapist was only causing him greater emotional harm. In addition, J.H. expressed a desire to limit A.J.H.'s involvement in soccer and to transfer him to a new school, despite the counsel of his therapist that these were the main sources of stability in A.J.H.'s life.

At this time, G.H. is more able to provide A.J.H. a stable, secure home. We conclude the juvenile court was correct to grant him temporary legal custody. The temporary nature of this arrangement should provide J.H. an opportunity to demonstrate she and G.H. can cooperate sufficiently so as to justify a return to joint custody.

**IV. Conclusion.** We have examined J.H.'s other assignments of error and decide them adversely to her. We affirm the juvenile court in all respects.

**AFFIRMED.**