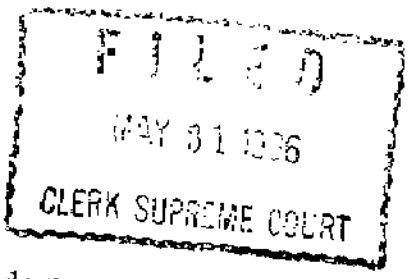
IN THE COURT OF APPEALS OF IOWA



No. 6-105 / 95-0982

IN THE INTEREST OF B.U., N.U., L.U., and J.U., Minor Children.

D.G., Mother,

Appellant.

Appeal from the Iowa District Court for Howard County, Allen D. Allbee, Judge.

Mother appeals permanency order placing her four children in the sole custody of their father. **AFFIRMED.**

Mark B. Anderson, Cresco, for appellant

Thomas J. Miller, Attorney General; Kathrine S. Miller-Todd, Assistant Attorney General; and Joseph Haskovec, County Attorney, for appellee State.

Kevin E. Schoeberl, Cresco, for appellees minor children.

Heard by Habhab, P.J., Huitink, J., and McCartney, S.J.* Vogel, J., takes no part.

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

A mother appeals from the decision of a juvenile court following a permanency hearing. She challenges whether reasonable efforts were made to reunify her with her children, the decision to transfer sole custody of the children to their father, and the grant of concurrent jurisdiction to the district court. Our review of the permanency order is de novo. *In re A.D.*, 489 N.W.2d 50, 52 (Iowa App. 1992). Although we are not bound by the findings of the trial court, we do give weight to those findings of fact because of its opportunity to observe witnesses. *In re S.V.*, 395 N.W.2d 666 (Iowa App. 1986).

Darlene and James are the parents of Jeremiah, born November 23, 1980, Briana, born January 1, 1982, Nathan, born July 22, 1984, and Leah, born January 17, 1986. The parents were divorced in 1990. The children were placed in the physical care of Darlene.

Darlene had a boyfriend who resided with her and her children. She initially advised the authorities that the boyfriend was only a renter, a relationship she later corrected. On February 10, 1992, it was discovered the boyfriend had sexually abused the female children. The boyfriend was arrested and subsequently plead guilty on July 16, 1992, to two counts of sexual abuse in the third degree. There was evidence to indicate Darlene knew of the abuse and knew of the risk the boyfriend posed to the children before she allowed him to move in with her family.

Upon learning of the abuse of her daughters, Darlene sided with her boyfriend and did not comprehend the harm he had inflicted upon her children. Given these circumstances, officials believed Darlene would not be supportive or able to protect the children from harm if they remained in her care. All of the children were placed in the care of their father subject to the protective supervision of the Iowa Department of Human Services (DHS).

The children were adjudicated children in need of assistance (CINA) on March 5, 1992. A dispositional hearing was scheduled for April 9, 1992, which was continued. At the time of that hearing, Darlene stated she had no present intent to marry her boyfriend. The next day Darlene married him, and she initially kept this information from officials involved in the case. Darlene did tell the children of the marriage and advised them to keep it a secret.

These proceedings were held in Linn County, where Darlene and the children then resided. The April 9, 1992, court order had ordered the mother not to discuss her boyfriend or any of the facts surrounding the criminal charges with the children. It was subsequently discovered the mother disregarded the order and discussed the matter with the children and subjected them to undue pressure regarding their involvement in the criminal charges. Despite a no-contact order, Darlene made it possible for her new husband to locate and attempt to persuade the children to change their stories regarding the abuse. As a result, the juvenile court entered

orders requiring visitations and phone conversations between the children and their mother be supervised and monitored by the DHS.

Despite her having stipulated to the allegations in the petition, despite her husband's pleas of guilty to two charges of sexual abuse, and despite the testimony of several of her children, Darlene still refused to believe or admit that her boyfriend had been guilty of such sexual abuse upon the children.

Dispositional hearings were then held in June and July, 1992. The court ordered on September 30 that the children continue to stay with their father with continued protective supervision from the Iowa Department of Human Services (DHS). The court, in part, stated that Darlene "has demonstrated a profound lack of insight into the dynamics of the sexual abuse . . . . She has consistently shown more concern and empathy for [her husband] than for her own children. . . . Darlene remains unconvinced that her daughters may have been subjected to such sexual abuse . . . ."

The children have remained in the care of their father since February 1992. A permanency hearing was held on April 11, 1995, and the juvenile court entered a permanency order on May 1, 1995. While Darlene had decided to get a divorce, at the time of the hearing she remained married and in contact with the man who had sexually abused her children.

Due to the bond the children had with their mother, the court found termination of Darlene's parental rights would not be in the best interests of the children. However, the court further found the children would be at risk of harm if returned to Darlene, and it ordered the sole custody of the children be transferred from Darlene to the father of the children.

Darlene appeals from the May 1, 1995, permanency order. She claims the DHS did not make reasonable efforts to reunify her with her children. Specifically, she claims the family was not provided with sexual abuse therapy. Absent such therapy, Darlene argues there would have been no opportunity for the family to address the problems which led to the removal of the children from the family home.

Reasonable services must be offered to preserve the family unit. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). We have reviewed the record and find the entire family has been provided with substantial amounts of services, including individual and group therapy. Darlene was specifically provided with therapy intended to address the issue of sexual abuse, but she failed to cooperate or follow through with the services.

Commencing on March 2, 1992, Darlene received therapy with Hildeborg Thorbjornsen through Keys to Living to address the sexual abuse of her children. Darlene attended only nine sessions before she abruptly ended this therapy. Darlene testified she had a "falling out" with the therapist, but it appears Darlene withheld

important information critical to the therapeutic process Darlene had a strong denial of what sexual abuse is and the damaging effects it could have upon her children. Darlene denied that her husband had acted inappropriately with her children and she denied any knowledge of his history of sexual misconduct with children.

In June of 1992 Darlene began individual therapy with the Abbe Center for Community Mental Health. Darlene initially obstructed the DHS from monitoring her treatment and progress by refusing to sign required release forms. Darlene was also to receive therapy from Tanager Place. However, June and September 1992 reports from Tanager Place indicate Darlene refused to work on some personal issues, making it difficult to provide the therapy she needed.

By July 1993 Darlene had completed a twelve-week session in a sexual abuse treatment group at the Abbe Center. Correspondence from her therapist indicates this counseling addressed both Darlene's experiences as a victim of sexual abuse as well as the sexual abuse of her children. The therapist believed Darlene would benefit from repeating the twelve-week session, but Darlene expressed a preference to involve herself in Tanager's non-offending spouses' group. Testimony at the permanency hearing indicated Darlene was not consistent in her initial efforts at utilizing Tanager's services.

The children moved with their father to Cresco, Iowa, in the summer of 1993. At that point Darlene was no longer committed to further treatment. She testified she

had been devastated by the move, and felt she could not get her children back and did not see any use in further therapy. Despite her lack of commitment, Darlene continued to be provided with therapy.

Darlene argues that she was not always provided with qualified services. However, the test is not whether additional services could have been offered but whether sufficient services were actually provided. At the outset of this case Darlene was provided with sexual abuse treatment. Her failure to fully utilize such services is her fault and is no basis for delaying the entry of a permanency order. Her duplicitous conduct and her continuing denial that abuse occurred made the services provided less effective.

Reasonable efforts were made to reunify the family and sufficient services were provided to address the issue of sexual abuse. At one point during her testimony at the permanency hearing, the director of the Tanager Place sexual abuse program said Darlene had "made a lot of wrong decisions." The record supports this characterization of Darlene. From the beginning Darlene vacillated with regard to whether she believed the sexual abuse had actually occurred. She remained loyal to the man who had abused her children, and, by doing so, undermined the efforts to address her needs of the children and the efforts to reunify the family. During much of the therapeutic process it appeared Darlene had chosen to support her husband at the expense of the best interests of her children.

Darlene now appears to have a renewed commitment toward treatment. However, her belated desire to disassociate herself from her husband and place her children first does not abrogate the fact the children had been in the care of their father for over three years at the time of the April 1995 hearing. They have established a bond with their father and step-family and are entitled to the security and stability offered by permanent placement with their father. Given the attitude Darlene took toward therapy, we find on this record the DHS made reasonable efforts and provided sufficient services to reunify the family. The best interests of the children are served by the decision to transfer the sole custody of the children to their father.

The final issue raised by Darlene is whether concurrent jurisdiction should have been granted. During the course of these proceedings the father of the children filed an application for concurrent jurisdiction. He wished to pursue modification of custody under the dissolution decree.

Concurrent court proceedings are governed by Iowa Code section 232.3. The juvenile court has the discretion to grant concurrent jurisdiction where all parties have received notice and were given an opportunity to be heard. Given the nature and length of the CINA proceedings and the ability of the father to provide a permanent home, we find no error in the grant of concurrent jurisdiction.

AFFIRMED.