IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 0-184 / 89-1821

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IN THE INTEREST OF S.C., A Child,

R.C., Natural Father,

Appellant.

Appeal from the Iowa District Court for Henry County, Gary J. Snyder, Associate Judge.

The natural father appeals the modification of a dispositional order transferring custody of his 17-year-old daughter from him to the Iowa Department of Human Services for foster care placement. **AFFIRMED.**

H. Craig Miller and Gene Krekel, of Hirsch, Adams, Hoth, Krekel, Putnam & Cahill, Burlington, for the appellant father.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General and Judy Sheirbon, Assistant Attorney General, for appellee State.

Richard J. Bell, of Bell & Vilsack, Mt. Pleasant, for the appellee mother.

Cynthia H. Danielson, Mt. Pleasant, guardian ad litem for child (appellee).

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

The natural father appeals the modification of a dispositional order transferring custody of his 17-year-old daughter from him to the Iowa Department of Human Services for foster care placement. He contends the evidence did not warrant foster placement and did not establish that the child was likely to suffer harm of any kind if returned to his home. We affirm the decision of the juvenile court.

The child in question is a girl born in August 1972. Her parents' marriage was dissolved in 1975, and she was in the custody of her father from 1975 to 1988.

In September 1988, the child and her younger sister were adjudicated to be children in need of assistance after three founded reports of physical abuse by the father. The children were placed in foster care for about a year but were returned to the father's home in late August 1989.

In October 1989, the Department of Human Services (DHS) received a report that the father had physically abused the child in question when he discovered her stealing cash from his wallet. Thereafter, the DHS filed an application for temporary removal and review of the dispositional order. After the hearing was held on the child's placement the juvenile court directed that the child once again be placed in foster care.

The father has appealed from the juvenile court order returning the child to foster care. The father contends the evidence did not warrant foster placement and did not establish that the child was likely to suffer harm of any kind if returned to his home.

The mother has not appealed from the juvenile court's order. Instead, she and the guardian ad litem have filed a joint appellee's brief asking that the juvenile court's order be affirmed.

The principles controlling our review are well established, and are not in dispute. Appellate review of CHINA proceedings is de novo; accordingly, we review the facts and the law and adjudicate rights anew where the issues have been properly preserved and presented. In Interest of D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). Our paramount concern is the welfare and best interest of the child. Id.

On appeal the natural father complains that it was error for the juvenile court to transfer custody of his daughter to the Department of Human services pursuant to Iowa Code section 232.103 for the purpose of foster care placement. Specifically, the father contends that the juvenile court ruling of October 26, 1989, contains no evidence of physical abuse or any imminent threat of those harms detailed in Iowa Code section 232.2(6), and that the juvenile court's ruling was not supported by clear and convincing evidence.

On October 11, 1989, the Henry County Attorney applied for temporary removal and for review of the dispostional order entered by the juvenile court on August 31, 1989. The hearing before the juvenile court was held on October 23, 1989. On October 31, 1989, after the evidentiary hearing, the juvenile court entered its order. In the order, the juvenile court referred to the October 23, 1989 proceedings as a matter "to review temporary placement." Upon our review of the entire record, we find the October 26, 1989 evidentiary hearing was a proceeding to modify or vacate the August 31, 1989 dispositional order pursuant to Iowa Code section 232.103 (1989).

The parties in this case disagree on the level of evidentiary justification that must be established by a party seeking modification or vacation of a prior dispositional order. The natural father, the natural mother and the guardian ad litem argue that a party seeking modification must establish by clear and convincing evidence that the child would be in imminent threat of those harms detailed in Iowa Code section 232.2(6) (1989).

The State contends that in order to justify modification of a previous dispositional order, the party seeking the modification must show a material and substantial change in circumstances as required in an action to modify a dissolution custody order. See In

Interest of J.F., 386 N.W.2d 149, 152 (Iowa App. 1986); In Interest of Leehey, 317 N.W.2d 513, 516 (Iowa App. 1982). We agree.

We find no merit in the natural father's, the natural mother's and the guardian ad litem's attempts to distinguish the case at bar from this courts decisions in In Interest of J.F., 386 N.W.2d 149, 152 (Iowa App. 1986), and In Interest of Leehey, 317 N.W.2d 513, 516 (Iowa App. 1982).

In this court's decisions in In Interest of J.F., 386 N.W.2d 149, 152 (Iowa App. 1986), and In Interest of Leehey, 317 N.W.2d 513, 516 (Iowa App. 1982), we addressed the issue whether there was sufficient ground for modification of a prior CHINA dispositional order pursuant to Iowa Code section 232.103. In In Interest of J.F., we stated, "a modification of custody or placement under the juvenile code requires a material and substantial change in circumstances." In Interest of J.F., 386 N.W.2d at 152. Consequently, we find that a party seeking modification or vacation of a prior dispositional order from the juvenile court must show a material and substantial change in circumstances that the best interest of the child requires a change in custody or placement. This standard recognizes the concept that once custody is fixed it should be disturbed only for the most cogent reasons and that a child needs a stable and continuing environment. In Interest of

Leehey, 317 N.W.2d at 516. Upon our de novo review of the record in this case, we conclude that this standard is satisfied.

Iowa Code section 232.103(5) allows the juvenile court to modify or vacate a prior dispositional order for good cause shown. Iowa Code § 232.103(5) (1989). The natural mother and guardian ad litem believe that the juvenile court's findings in this case satisfy the good cause standard of section 232.103(5). We agree.

In September 1988, the child in question and her sister were adjudicated to be children in need of assistance. The CHINA adjudication was based on reports the girls were being physically abused by their father and concerns of inadequate physical facilities in the home. There were three founded physical abuse reports on the father stemming from incidents occurring in January, May, and June 1988. The children were placed in foster care for about a year. The father was required to attend an alcohol abuse treatment program for a drinking problem. In August 1989, progress had been made with the condition of the home, the father's alcohol problem and family counseling. Thereafter, the children were returned to the father's custody.

In October 1989, the child in question reported that her father had grabbed and poked her when he discovered her stealing cash from his wallet. Investigators found no

evidence of physical injury to substantiate a physical abuse report. However, at the same time, the child told investigators that she was pregnant and that she feared physical abuse from her father when he discovered the pregnancy. After receiving these reports, the Department of Human Services sought and received oral authorization from the juvenile court to place the child with her mother on a temporary basis.

At the time of trial, the child in question was 17 years old. She will be 18 years of age on August 24, 1990. At trial, she testified:

> Q. Could you tell the Court why it is that you feel it's most appropriate for you to be in your mother's home by Court order?
> A. Because of my pregnancy and I just couldn't handle it there at Dad's and the way that environment and the stressfulness that I went through.

The child further indicated she is not comfortable discussing the pregnancy with her father. The child requested placement with her mother or in the alternative returning her to her previous foster home placement.

The State asserts that the material and substantial change of circumstances is the child's pregnancy which requires additional medical care, counseling and educational services be provided to her and the unborn child. The State further maintains the history of the father's physical abuse and unwillingness to meet some very

basic physical and emotional needs of his daughters supports the juvenile court's finding the father's home no longer provides an adequate environment for the minor child and her unborn baby.

We believe the record, in the instant case, contains sufficient evidence of conditions since the juvenile court's original dispositional order which have so materially and substantially changed that the best interests of the child require a change in custody or placement. We also believe the history of the father's relationship with his daughters is an important factor to be considered in this case. The material and substantial change of circumstances is the child's pregnancy, the lack of communication between the child and her father, and her desire to be placed outside of her father's home to avoid any additional stress. The health and welfare of the child in question and her unborn baby will be at risk if she does not receive proper health and prenatal care. Additionally, this child will need appropriate emotional support and guidance. Upon our review of the record, we believe neither the child's mother nor her father are capable of satisfying her physical and emotional needs. However, we do not find the evidence supports a finding that the father is physically abusive.

We believe it is clear the juvenile court's decision is in accord with the weight of evidence in this case. We find the juvenile court's conclusion that foster care was in the best interest of the child in this case was supported by the record. We further find the juvenile court's decision to modify the original dispositional order was supported by good cause.

The natural father's next contention claiming the juvenile court's decision was erroneous is without merit.

We affirm the decision of the juvenile court in all respects.

AFFIRMED.