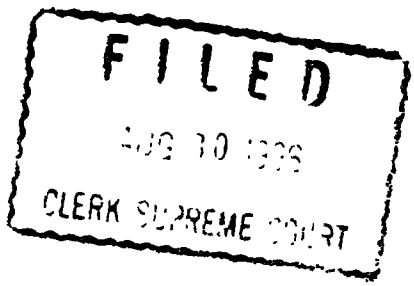
IN THE COURT OF APPEALS OF IOWA

No. 6-350 / 95-1869



IN THE INTERESTS OF S.S. and **J.S.**, Minor Children.

A.S.F., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Judge.

The mother challenges the order denying her motion to modify a no contact order between the stepfather and his stepchildren. **AFFIRMED.**

Todd E. Babich of Babich, McConell & Renzo, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee.

Heard by Cady, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

On January 2, 1992, a temporary order of no contact was filed prohibiting Melvin from having contact with S.S. and J.S., the minor children of his girlfriend, Ann. The no contact order was based on allegations of sexual abuse. Ann and Melvin were married shortly thereafter on January 13, 1992. The no contact order was amended two months later allowing Melvin to move in with Ann since the children were living with their grandfather at the time. Melvin, however, was ordered to continue refraining from visiting, seeing, speaking to, communicating with, or being in the immediate vicinity of S.S. and J.S.

In July 1992, the district court adjudicated S.S. and J.S. children in need of assistance (CINA). In so finding, the court noted Ann's other two children, Sh.S. and A.S., were living with their father in Alabama. A.S. made allegations of sexual abuse by Melvin when Melvin was living with Ann. A.S. also made allegations of physical abuse by Ann. While the court did not find all of the allegations to be credible, the court did find there was clear and convincing evidence A.S. was sexually abused by Melvin. The court also found A.S. and S.S. were physically abused by Melvin and Ann. Consequently, S.S. and J.S., who were still in Ann's care, were adjudicated CINA. The adjudication was not appealed. The no contact order was continued.

Melvin later entered an *Alford* plea to charges of lascivious acts with a child. This plea was the result of the charges made by A.S. of sexual abuse.

A review hearing was held and an order was filed in January 1993. The court found S.S. and J.S. had moved back in with Ann and Melvin had moved out. The court further found the children were confirmed to be CINA and the no contact order was to be continued.

Ann filed a motion to modify the no contact order in December 1993 to allow family therapy. Initially, the hearing was continued and Melvin was ordered to participate in a couple of evaluation programs at Broadlawns Medical Center. The no contact order was continued. In April 1994, the no contact order was modified only to allow counseling sessions between the children and Melvin.

Ann filed a second application to modify the no contact order in August 1994. In this application, Ann requested the order be modified to allow her family to be reunified. In an order dated September 13, 1994, the district court found Melvin had not completed sexual abuse counseling and, without the completion of such counseling, a modification of the no contact order would not be in the best interest of the children.

After a review hearing, the court filed another order on October 12, 1995, regarding Ann's request for reunification. It is this order which is currently before us on appeal. In the order, the district court found a therapist, Rebecca Monsma, who had been working with the family for almost one and one-half years, recommended reunification on the condition Melvin would never be left alone with the children and would not be responsible for decisions regarding the children. The court found

problems with Monsma's credibility. The court also found Melvin continued to deny any abuse ever occurred and refused to seek therapy from a therapist who treats people who do not admit to abuse. Melvin claimed he lacked the funds necessary for the treatment; however, the court believed otherwise based on the fact Melvin had paid for portions of other therapy he received. The district court concluded the no contact order should continue, the modification of the no contact order allowing for family therapy should be rescinded, and the application to modify the order should be denied.

Ann appeals.

I. ***Scope of Review.*** In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re N.M.W.*, 461 N.W.2d 478 (Iowa App. 1990). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. ***Reunification.*** Ann contends the district court erred in denying reunification of the family. She argues this finding was in error in light of the recommendations of the therapists. She also argues the family met the counseling requirements ordered by the district court.

The term reunification has been used extensively in this case. It is, however, a misnomer. This "family" was never unified so it cannot now be reunified. The children are living with their mother. The abuse was reported and a no contact order

was issued prior to Ann marrying Melvin. This case forces us to weigh Ann's rights to live with whomever she pleases against the State's interest in seeing the children are safe from harm At best, the no contact order against the perpetrator of the sexual abuse of A.S. could be lifted to allow the mother's new husband to live in the home with her and the children.

Melvin's therapist, William Clark, recommended reunification if family therapy went well. Clark testified he did not believe Melvin ever sexually abused the children. Clark admitted he had never seen the children in any sessions and Ann had only been present in one session briefly in order to clarify a point. Another therapist, Rebecca Monsma, also recommended reunification. She, however, conditioned her recommendation on the requirement that Melvin would never be left alone with the children and he would never be responsible for decisions regarding the children.

Melinda Ross, a social worker for the Child Protective Treatment unit, testified that while the family had probably received the maximum benefit it could receive from family therapy, reunification should still not occur until Melvin received therapy or counseling for sexual abuse. While Ross acknowledged Melvin had participated in various counseling and therapy sessions, Ross noted that none of these programs addressed sexual abuse which is at the heart of this case. Ross stated there was a therapist in Des Moines, Nick Tormey, who works with non-admitting perpetrators. Melvin testified he did not have enough money to see Tormey.

We find the recommendations of Clark and Monsma should not be given much weight. Clark did not have a complete picture, as he had not met with the children, and Monsma's recommendations were unreasonable and impracticable. In addition, the issue of sexual abuse has not been dealt with in any of Melvin's therapy. It was allegations of sexual abuse which led to the no contact order and CINA adjudications in the first place. Therefore, we conclude the district court did not err in finding that allowing Melvin in the home would place the children at risk of further harm.

III. ***Rescinding of the Modification of the No Contact Order.*** Ann contends the district court erred in rescinding the modification of the no contact order and reinstating the order in full force.

The no contact order was modified in April 1994 for the sole reason of allowing Melvin to participate in family therapy. The district court, in rescinding the modification to the no contact order, noted that continued family therapy would not be needed and would not be in the best interests of the children. The basis for this finding can be found in the testimony given by social worker Ross that maximum benefits from family therapy have been met. What remains is for Melvin to address the sexual abuse issue which does not require joint therapy sessions with the children. Therefore, until he seeks such therapy, the district court was correct in rescinding the modified no contact order.

IV. ***Testimony by Therapist.*** Ann's final contention is the district court erred in failing to give appropriate credibility to the testimony of the therapist. Rebecca Monsma

The district court is under no obligation to accept the recommendations of a court-appointed therapist simply because the district court appointed the therapist. In this particular case, the district court gave persuasive reasons which were supported in the record for minimizing the weight of Monsma's testimony including: (1) minimizing Melvin's use of marijuana; (2) aligning herself with the mother, thereby losing her neutrality as a therapist; (3) feeling Melvin had been misjudged; and (4) not placing much emphasis on the two founded sexual abuse reports against Melvin. We give weight to the findings of the trial court and agree with the reasoning used to reach those findings.

AFFIRMED.

MEMO

TO: Judges **DATE:** July 11, 1995

FROM: Judge Cady **RE:** In re S.S. 6-350 (Vgl)

I would suggest we strike the last line of the decision, "our *de novo review* of the record leads us to the conclusion there is substantial evidence to support the district courts' conclusions" (p.7). I think it could be viewed as confusing the two reviewing standards.

I would suggest we conclude by simply indicating "we give weight to the findings of the trial court, and agree with the reasoning used to reach those findings."