IN THE COURT OF APPEALS OF IOWA

No. 5-023 / 94-0115

FILED
MAY 30 1995
CLERK SUPREME COURT

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

C.L.,

Mother-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Judge and J. G. Johnson, District Associate Judge.

Mother appeals from the juvenile court's ex parte order removing her children from her custody, from its order adjudicating them children in need of assistance, and placing custody of the children with the Department of Human Services for placement in family foster care. **AFFIRMED AND REMANDED.**

John W. Ackerman of Ackerman Law Office, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Charles K. Phillips, Assistant Attorney General, and Dan Block, Assistant County Attorney, for appellee-State.

Lon Britt, Assistant Public Defender, Waterloo, guardian ad litem for minor children.

Heard by Donielson, C.J., and Sackett and Habhab, JJ.

SACKETT, J.

This case involves a mother of five adopted children of different nationalities trying to cope with the problems of maturing children and the stress of a dissolution of her marriage. The question in this appeal is whether the children should have been removed from her care and whether proper services are being offered to reunite the family. We remand with directions.

Appellant mother, Carolyn, divorced her husband, Chris, who is not a party to these proceedings, in 1991.

Carolyn is a forty-two year-old woman with an associate degree in nursing. She and Chris had adopted five children of Korean descent, three of whom are the subject of this action, Maria, born February 1, 1978; Nathan, born December 21, 1978; and Josie, born February 28, 1984. Each child had physical or mental problems when brought to the United States and Carolyn provided extraordinary nurturing and physical and emotional care. Josie was deaf. She has had treatment and has a hearing aid to alleviate her deafness and has had speech training. Josie is presently mainstreamed and able to perform at her grade level. Nathan was adopted at the age of eight. When he came to the United States, he was in a fetal position, in diapers, and not able to walk. Nathan has cerebral palsy. With surgery, he is now able to walk and, with services, he has gained independence.

There was abuse in the marriage and the dissolution was traumatic. Chris has a personality disorder, a depression disorder, and an explosive violence disorder. Carolyn enlisted the department of human services and Lutheran Services and Catholic Charities to help with the older two boys. They are now adults and live independently.

Carolyn received a head injury and has suffered emotional problems. There are medical reports stating she is not under any mental disability.

The problems occurred when Carolyn began making a number of trips between Iowa and Indiana with the children without necessary provisions for immediate housing and schooling. These travels took place over the course of six weeks and, during that time, she stayed with friends, in motels, and, on a few occasions, in her car.

When, in April 1993, she returned to Iowa, the juvenile court entered an ex parte order pursuant to Iowa Code section 232.78 (1993) for the temporary removal of the children from Carolyn's care. The order was based on the allegation Carolyn had been traveling back and forth between Iowa and Indiana for several months during which she and the children sometimes lived in her car with two dogs and a cat.

On May 14, 1993, the temporary removal order was sustained and Nathan and Maria were adjudicated children in need of assistance. The court ordered Josie and Nathan be placed in family foster care and Maria remain in the home of a family friend. The court further ordered Carolyn to undergo a mental health assessment. An adjudication hearing in regard to Josie and dispositional hearing in regard to Maria and Nathan was twice continued so Carolyn could complete a psychiatric evaluation.

After an adjudication and dispositional hearing in December 1993, the court found Josie to be a child in need of assistance and placed Josie in the custody of the Department of Human Services for family foster care placement and continued Nathan and Maria's custody with the Department of Human Services for family foster care placement.

Carolyn appeals both the temporary removal order and the orders finding Maria, Nathan, and Josie children in need of assistance.

Carolyn contends the district court erred in removing the children from her custody under the temporary removal order. This is a moot issue. *See In re A.M.H.*, 516 N.W.2d 867 (Iowa 1994), where the court said:

> [W]e need not decide the validity of the ex parte removal order or the order entered after hearing because this issue is moot. Following the removal hearing on March 18, the juvenile court confirmed the prior ex parte order placing temporary custody of the child with DHS and ordered scheduling of a dispositional hearing. The dispositional hearing was scheduled for April 14. Later the dispositional hearing was rescheduled and actually held on May 10 and 11. Custody of the child was placed with DHS under the dispositional order. Any error committed in granting the temporary ex parte order cannot now be remedied. We cannot go back in time and restore custody based on alleged errors in the initial removal order.

Id. at 871. There was a hearing on the temporary order and a subsequent hearing finding the children in need of assistance.

Generally courts will not consider an action if it no longer presents a justiciable controversy. *Rodine v. Zoning Bd. of Adjustment*, 434 N.W.2d 124, 125 (Iowa App. 1988). Moot questions might be considered when (1) they are of great public importance and (2) are likely to recur. *Id.* We find it unnecessary to address the temporary removal order. We do, however, look to the reasons for removal in assessing Carolyn's other complaints.

Carolyn has never physically or sexually abused the children. She should have had a better plan of organization. Her problems could have been remedied by providing her with assistance in finding housing, enrolling the children in school, and assisting her in finding employment. That did not happen.

On her last trip back to Iowa to pick up one of her children and while she was waiting in the driveway to pick up a child, alleged asleep, the car where she and the other children waited was surrounded by police officers. The officers pounded on the car windows and ordered her out of the car. The police threatened to handcuff

Carolyn or take her to jail if she questioned their authority to take the children. The children were taken by the police with no explanation. It was then that the social worker called the juvenile judge and requested an immediate removal order.

There also is an earlier issue of alleged denial of critical care. Nathan suffers from cerebral palsy and is on crutches. He is intelligent and mobile. He has no problem getting around. Carolyn left him in a motel room and she unplugged the telephone because he had been making inappropriate calls to 900 numbers. Nathan is fourteen years old. If he had a problem, he could easily go to the desk in the motel. This is not a denial of critical care.

The oral arguments in this case were emotion ridden with the attorney for the mother alleging the state was engaged in gestapo-type tactics and the attorney for the state denying such tactics were ever employed.

We do not characterize the State's actions as gestapo, but circumstances where Iowa law enforcement officers in uniform remove children from their parent's custody should be extremely limited. It is frightening and emotionally devastating for a child to be snatched by an officer from a parent or parents with no explanation. Sensitivity to the child must be of concern where there is no immediate threat of harm. The manner of removal had the potential of doing serious emotional damage to the children.

Carolyn contends the children should not have been found children in need of assistance. We review the evidence de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the children's interest. *See In re D.L.*, 401 N.W.2d 201, 202 (Iowa App. 1986). We review the record to see if the finding that the children are in need of assistance is supported by clear and convincing evidence. Iowa Code § 232.96(2) (1993). We are not bound by the findings of the juvenile

court but give weight to its findings of fact because it had the opportunity to hear and observe the witnesses. *In re S.V.*, 395 N.W.2d 666, 668 (Iowa App. 1986).

In February and April of 1993, the children's lifestyle changed. Carolyn uprooted them and kept them out of school which resulted in their spending much time traveling and living in a car and motel rooms.

Carolyn explains this lifestyle as a plan to reestablish her relationship with her mother. We agree with the juvenile court, despite Carolyn's intention, she needed assistance with the children to get them in a stable home and enroll them in school. We affirm the finding they are children in need of assistance.

The second issue is the children should not be kept from Carolyn. She advances the children have suffered trauma because of the removal, confusion from being in a number of different environments, and a resulting inability to form a lasting relationship as adults. *See In re T.R.*, 460 N.W.2d 873, 875-76 (Iowa App. 1990).

The State has an obligation to provide an opportunity for the parents to resume care of their children. *See In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992).

Carolyn has attended parenting classes, has undergone court-ordered evaluations and counseling and therapy, and has made changes to accommodate the requirements of the Department who have denied her requests to relocate the children in Cedar Rapids where she works and resides. See *A.L.*, 492 N.W.2d at 202, where the court found steps should be taken to relocate the children in the venue of their parents.

The only visitation allowed has been supervised visitation. After the visits, the children became verbally aggressive toward a social worker and were expressing anger. As a result, the children were punished by being grounded in their foster homes and the social worker determined visitation should be more restrictive and

moved from a public setting to the social worker's office which is not conducive to uniting the mother and the children. The visitation should not have been curtailed.

We affirm the finding the children are in need of assistance and remand to the juvenile court to structure services, including visitation and family counseling, that will unite the family.

AFFIRMED AND REMANDED.

Donielson, J., concurs; Habhab, J., specially concurs.

HABHAB, J. (specially concurring)

I concur specially. I concur in the result only.