FILED
MAY 26 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-180 / 93-1462

IN THE INTEREST OF A.A.S. and M.L.L., Minor Children,

C.S., Father,

Appellant,

S.L., Mother,

Appellant.

Appeal from the Iowa District Court for Shelby County, Gordon C. Abel, District Associate Judge.

C.S. and S.L. appeal an order continuing their two minor children, A.A.S. and M.L.L., in foster care and ordering the state to file a petition to terminate their parental rights. **AFFIRMED.**

Phil Caniglia, Council Bluffs, for appellant-mother.

Thomas J. Anderson, of McMartin & Anderson, Harlan, for appellant-father.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; and Susan Christiansen, Assistant County Attorney, for appellee-State.

William T. Early of Kohorst Law Firm, Harlan, guardian ad litem for minor children.

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

DONIELSON, C.J.

Alexander and Melissa are the children of Sandra and Curtis, who never married. Alex was born on January 12, 1989, and Melissa was born on November 13, 1985. The parents are both deaf.

Melissa was adjudicated CINA in July, 1989. The parents had inappropriately disciplined her and locked her in her room at night. Alex was adjudicated CINA in January 1990. The district court found he had been or was likely to be physically abused or neglected. There were founded abuse reports against the parents in January 1986, February 1989, March 1989, and August 1989. The parents received parenting and domestic abuse counseling services and the case was dismissed in June 1991.

Later in the summer of 1991, the mother left the children with the father and moved to Minnesota with a boyfriend. The father left the children with his sister and then with a babysitter. The babysitter contacted the authorities. The children's great-grandmother took custody of them and obtained guardianship in Shelby County district court. The children then lived with various relatives. The great-grandmother contacted authorities in May 1992, indicating she could no longer care for the children's physical, mental and financial needs.

The children were placed in foster care and a CINA petition was filed. The great-grandmother and the guardian ad litem waived a temporary removal hearing. The mother

was personally served notice of the CINA hearing. The father was served by certified mail, but did not attend the hearing. The mother and great-grandmother admitted the allegations in the petition and the children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(f) and (k). Among other things, the court was concerned about the children's sexual acting out behaviors. The children were continued in foster care and provided therapy. Home studies were ordered.

In June 1993, all parties attended a review / modification hearing. The district court denied the parents' request to place the children with a paternal aunt and uncle. The court continued foster care placements and suspended visitation based on the children's negative reactions to visits. The court also ordered the county attorney to file a petition for termination of the parents' rights.

The parents appeal. First, they contend the district court did not consider the least restrictive placement of the children. Second, they contend adequate weight was not given to the home study of the paternal aunt. Third, they argue undue emphasis has been placed on their hearing impairment. Fourth, the parents assert the distance between their location in Black Hawk County and the children's foster homes in Harrison County and the time these proceedings are taking have been used as a weapon by the State against reunification of the family.

We review proceedings concerning children in need of assistance de novo. Iowa R. App. P. 4; In re Blackledge, 304 N.W.2d 209, 210 (Iowa 1981). We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7). This is in part because the district court has the unique opportunity to hear and observe the witnesses. In re D.R.R., 498 N.W.2d 920, 922 (Iowa App. 1993). Our paramount concern is the best interest of the children. Id.

After a careful review of the record, including the home study done on the aunt and uncle, Karen and John, and Karen's testimony at the hearing, we are convinced the district court made the best decision for the children. At the time of the home study in May 1993 Karen was on probation for domestic abuse. She struck John in the head with a knife during a disagreement she blames on alcohol. She testified she no longer drinks and both she and John were receiving alcohol treatment. Karen is a homemaker who babysits as many as six or seven children in addition to her daughter. John was unemployed but hoped to be employed as a truck driver soon. They were living with Karen's mother but planned to move to a larger rental house soon. Karen's answers to questions about dealing with problems with Alex show she minimizes his behavioral problems and overestimates her ability to cope with two difficult children. Karen obviously regrets not keeping Melissa and Alex before and wants to keep the family together. Such

regret is not a basis for putting the children in Karen's and John's custody. The record also suggests there is little likelihood Melissa and Alex can be returned to Sandra or Curt in the foreseeable future. This would mean John and Karen would be taking on long-term or permanent custody. The record before us convinces us this would not be best for Melissa and Alex.

The studies done of Sandra and Curt clearly show neither is equipped to meet the special needs of their children now. The children have been in foster homes since May 1992. They have not been in their parents' custody since the middle of 1991. None of the family members with whom the children stayed were able to care for them on a long-term basis. In order to receive the care they need and to meet their special needs, the children were placed in separate foster homes. The court made the least restrictive appropriate placement at the time of the initial CINA adjudication. Melissa and Alex need stability and continued therapy. Moving them to Waterloo would not benefit them. It would only hinder their progress. We conclude, as did the district court, their best interest would be served by continuing their current placement until such time as Sandra's and Curt's parental rights are terminated. We also determine the claims raised by the parents concerning their hearing impairment and the distance between their residence and the children's foster placement are without merit.

AFFIRMED.