FILED
JUN 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-357 / 90-150

IN THE INTEREST OF S.S., L.S. and C.S., Children,
M.S. and V.S., Father and Mother,
Appellants.

253

Appeal from the Iowa District Court for Osceola County, Cameron B. Arnold and David C. Larson, District Associate Judges.

The parents appeal from the juvenile court ruling finding the minor children to be children in need of assistance and directing the father to live away from the family home. **AFFIRMED AS MODIFIED.**

E. H. Philiph, Sibley, for appellants.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

The family we are concerned with in this appeal consists of the parents, M.S. and V.S., married in 1971. They have four children: an eighteen year old son who is out of the home and three minor daughters. S.S. was born in 1972; L.S. was born in 1975 and C.S., born in 1979.

M.S., the father was employed as a school bus driver until the Juvenile Court's adjudication, at which time he lost his job. The children's mother, V.S., is employed by Campbell's Soup Company in Worthington, Minnesota.

In 1988, during the course of an argument between S.S. and her mother, the teenager revealed her father had sexually abused her when she was about seven years old.

When confronted by his wife, M.S. admitted to sexually abusing his daughter for a period of time. V.S. contacted the Department of Human Services and a substantiated sexual abuse report resulted. However, no recommendation regarding adjudication or treatment was made at that time.

In April of 1989 M.S. and V.S. contacted the Osceola County Department of Human Services because they were having difficulty dealing with and disciplining S.S, now seventeen. After mother and daughter attended a few therapy sessions, the therapist recommended the entire family be involved in the Northwest Iowa Mental Health Center's family centered services. The family attended six sessions with Rodney McDowell, a family therapist at the

facility. The family also attended eight sessions with Annette Janssen, a parent educator for the Mental Health Facility. Because the family was uncooperative in the scheduling of subsequent appointments, McDowell recommended court-ordered attendance in the Sexual Abuse Program. Involvement in this program requires the perpetrator be removed from the home.

At the Adjudicatory Hearing, the juvenile court concluded the three girls were children in need of assistance under Iowa Code §232.2(6)(b)(c)(d). Pursuant to Iowa Code §232.82, the court ejected M.S. from the family home and ordered him not to return until a further court order. The family was further ordered to participate in the sexual abuse treatment program at Northwest Iowa Mental Health Center.

The parents now appeal. They challenge the sufficiency of the evidence of both the CHINA adjudication and the father's ejectment from his own home. They contend there is not clear and convincing evidence the children are Children in Need of Assistance under Chapter 232 of the Code. They further argue substantial evidence does not exist the father's presence in the home presented a danger to the girls' life or physical, emotional or mental health.

We affirm as modified.

The principles guiding our review are well established. 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. Our paramount concern is the welfare and bests interests of the child. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986).

In resolving the issues presented in this appeal, our task is twofold. We must review the record and determine whether the State has met its burden of proving by clear and convincing evidence the girls are children in need of assistance. Secondly, we must decide if the State has provided substantial evidence that M.S.'s continued presence in his home presents a danger to the children's physical, emotional or mental health.

After a de novo review we conclude there is clear and convincing evidence the girls are children in need of assistance pursuant to 232.2(6)(b)(c)(d). The mental health professionals involved in this case conclude there were several factors causing concern further sexual abuse might occur at some time in the future. Because the two younger daughters may face some risk, the adjudication is affirmed. We, however, do not agree with the action taken by the juvenile court in ejecting M.S. from his home. This action is based on Iowa Code §232.82 which reads in pertinent part:

> 1. * * * if it is alleged that a parent * * * has committed a sexual offense with or against a child * * * the juvenile court may enter an ex parte order requiring the alleged sexual offender to vacate the child's residence upon a showing that a probable cause

> exists to believe that the sexual offense has occurred and that substantial evidence exists to believe that the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health

There is not substantial evidence in the record the father's presence in the home presents a danger to the physical or emotional health of his three daughters.

The State contends the two young girls are in danger because research indicates sexual abuse will reoccur if it is not dealt with therapeutically. The State further contends this family was reluctant and resistant to dealing with this issue through the family-centered services offered by the Northwest Iowa Mental Health Center. This evidence does not rise to the level of substantial evidence required to remove M.S. from his home. M.S. admitted to the fact he touched his daughter's genitals on several occasions. This behavior stopped seven years ago. No one involved with this family is alleging this behavior has occurred since that time.

The father's ejectment strikes this court as an unnecessarily harsh intervention. We understand the juvenile court's desire to protect the younger girls, who are fifteen and eleven years old. However, we are convinced there are more productive, less punitive alternatives available to accomplish this while keeping the family together.

This is clearly not a family reluctant to utilize mental health resources. Approximately seven years ago M.S. and V.S. were having marital problems. V.S. confronted her husband and the couple began counseling with a psychologist at the Mental Health Center as well as with a minister. V.S. contacted social services when she began experiencing difficulty disciplining the oldest daughter. The family did participate in the Northwest Mental Health Center's family-centered services for a period of time. They discontinued because they experienced scheduling difficulties. M.S. also stated he didn't want to work with McDowell because the therapist "turns things around and puts things in there that isn't in there." M.S. has agreed to attend counseling sessions. There are several alternatives available to this family which would provide the counseling needed as well as a method of monitoring the family to protect the girls, but allow the father to remain in the home.

We modify the juvenile court order to allow M.S. to return to the home. We further order the family to undergo counseling with a program of their choice.

AFFIRMED AS MODIFIED.