IN THE IOWA COURT OF APPEALS

IN THE INTEREST OF:

TABATHA MARIE CULLOR and
ARRON CHARLES CULLOR,

Minor Children

FILED
MAY 26 1981
CLERK SUPREME COURT

Filed May 26, 1981

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3-65281

Appeal from Tama Juvenile Court. Brent G. Harstad, Judge.

Children's natural father and paternal aunt and uncle appeal, pursuant to section 232.133, The Code, from dispositional order of the juvenile court awarding temporary custody of the children to their maternal aunt and uncle who live in California.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

Lorenz F. Fett, and John Jewell of Pattie, Hinshaw & King, Marshalltown, Ia., for appellant.

Thomas J. Miller, Attorney General of Iowa, and Brent D. Hege, Assistant Attorney General for appellee.

Dennis Appelgate, of Michelson & Roan, Toledo, Ia., for parents.

Mark D. Havlik, of Morris, Anderson & Havlik, Tama, Ia., for the children.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

**PER CURIAM**

Children's natural father and paternal aunt and uncle appeal, pursuant to section 232.133, The Code, from dispositional order of the juvenile court awarding temporary custody of the children to their maternal aunt and uncle who live in California. They claim that the best interests of the children require custody be awarded to the paternal aunt and uncle who live in Iowa. Our review is de novo. In Interest of Miller Children, 228 N.W.2d 60, 62 (Iowa 1975). We affirm in part, vacate in part and remand.

Charles Cullor was accused of committing the April 6, 1980 murder of his wife, Linda. She had custody of their two children—Tabatha, born May 16, 1973, and Aaron, born June 6, 1974—during the pendency of their dissolution action. On April 21, 1980, the children were stipulated to be children in need of assistance under chapter 232, The Code. A hearing to determine temporary custody of the children was held on June 30, 1980. The custody dispute was between Carl and Louise Chancellor (paternal aunt and uncle) and Joe and Caron McClain (maternal aunt and uncle). The court's order of July 2 awarded custody to the McClains. The court also ruled that if Cullor was convicted of murder, the temporary custody order would become permanent. Visitation rights for the Chancellors were also established. This appeal followed.

Our primary concern in this case is to determine what are the best interests of Tabatha and Aaron. Iowa R. App. P. 14(f)(15). We need not summarize all of the evidence presented by the various parties; suffice it to say that the record clearly supports the trial court's conclusion that either home would provide a stable, caring and loving environment for these children. We also agree, however, that the custody award to the McClains is justified in order to insulate the children to some extent from the aftermath of their father's murder trial in Iowa. This is supported from the testimony of Ann Hoekstra, a psychiatric social worker at the Mental Health Clinic in Tama County:

> A. ... I do not think that — I think because a murder trial is such an emotionally charged event, that it may be very uncomfortable for the children, and they would be forced to deal repeatedly with their concerns about what will happen to father and whether we can trust him or not. I believe at this point that they do trust their father.
>
> Q. *Would you think that they would perhaps be more* insulated from that discussion of the murder preceeding if they were residing in California?

A. I do.

We also find the trial court thoroughly analyzed the evidence and cited other good and sufficient reasons for its conclusion. We affirm the award of temporary custody of the children to the McClains.

We vacate, however, that portion of the order which states that the temporary order should be made permanent if Cullor is convicted of his wife's murder. The purpose of this hearing was to determine temporary custody only. We remand to the trial court to make a permanent custody determination at the appropriate time.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.