FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF	)	
SHERRY ANN WRAGE AND	)	Filed December 27, 1979
RICKY EDWARD WRAGE,	)	241
Children.	)	3-62370

Appeal from Scott District Court - Don A. Petruccelli, Associate Judge.

Parents appeal from decree terminating their parental rights. Reversed and Remanded.

Samuel J. Walker of Bettendorf, for appellants.

Thomas J. Miller, Attorney General of Iowa, Stephen C. Robinson and Francis C. Hoyt, Jr., Assistant Attorney Generals, and Patricia Rhodes Cepican of Davenport, for children.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Appellants, Christoper and Tina Wrage, appeal juvenile court decision that found them to be unfit parents pursuant to subsections 600A.8(5) and 600A.8(6), The Code 1977, and subsections 232.2(13)(b) and 232.2(13)(h), The Code 1975. On appeal, appellants contend the juvenile court erred in holding their conduct was likely to be detrimental to the physical and mental health and morals of their children, Ricky Edward and Sherry Ann. Appellants also contend subsections 232.2(13)(b) and 232.2(13)(h), The Code 1975, do not provide a basis for termination of their parental rights. We reverse and remand.

In our de novo review, In re Kelly, 262 N.W.2d 781, 782 (Iowa 1978); Iowa R. App. P. 4, we apply the "clear and convincing proof" standard. In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979); In re Lewis, 257 N.W.2d 505, 511 (1977); § 600A.8, The Code 1977. We give weight to the findings of fact of the trial court, especially when considering witness credibility, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

The best interests of the children are paramount. Iowa R. App. P. 14(f)(15). While there is a presumption the best interests of the child will be served by leaving custody with the parents, this is not conclusive. The State, as parens patriae, has the duty to see every child within its borders receives proper care and treatment. In re Wardle, 207 N.W.2d 554, 556 (Iowa 1973); In re Morrison, 259 Iowa 301, 311, 144 N.W.2d 97, 103 (1966).

The children involved are Sherry, age six, and Ricky, age four. Their parents were married on August 23, 1972, when Tina was sixteen and Christopher was seventeen. Christopher is deaf and has no speaking ability. He communicates using sign language and writing learned while a resident-student at the Iowa School for the Deaf, where he received the equivalent of a high school education. Christopher met Tina, who has impaired hearing, at the Iowa School for the Deaf. She can communicate verbally to a limited degree, but communicates best by sign and writing.

The Department of Social Services first became involved with the Wrages in 1975. At that time, Christopher had a drinking problem that led to his admission at Mt. Pleasant Mental Health Institution. Randy Bolton, a psychiatric social worker, helped Christopher overcome his problem, which was also contributing to his employment difficulties. During this same period, Terry Hughs, a social worker, attempted to help

Tina with basic parenting skills. In the opinion of these social workers Tina lacked basic housekeeping and cooking skills and the children were not getting proper love, nurturing, or stimulation from their parents. In support of their opinion, they point to Sherry's slow language development and Ricky's flat head that resulted from being left in the crib too long without being turned over. They also stated Ricky was severely underweight and his color was gray and pasty. In their opinion the children ate too much junk food. Dr. Dorothy Gildea, the children's doctor, testified the children were not suffering from malnutrition. The doctor also testified that while Sherry's language development was slow, it was her opinion Sherry would improve when she went to school and spent time with other children.

Sometime prior to February 1976, Sherry developed a cough. Her parents were not able to hear her coughing and did not realize she was ill. The unattended cough developed into bilateral bronchial pneumonia and Sherry had to be hospitalized. Dr. Gildea treated her for this illness, and testified she was concerned Sherry's life might be in danger if similar conditions were to continue. The doctor also testified Sherry might outgrow this problem.

Due to these problems an adjudicatory hearing was held on April 8, 1976. Both children were found to be in need of assistance. Ricky, who was six months old, was placed in a foster home by the Department of Social Services and has remained in foster care since that time. Sherry was also placed in a foster home. During this stressful period, the Wrages separated and divorce seemed imminent. After several weeks apart, however, the couple reunited.

The Department of Social Services along with the Visiting Nurse's Association and Homemaker Services continued to work with the Wrages. It was often difficult and slow for the Wrages to communicate with the workers from these agencies. Sometimes a translator would be present to aid in communication. Unfortunately, they often had to write notes to communicate, which limited communication. The people who had worked with the Wrages testified progress was extremely slow.

In August 1976 Sherry returned to her parents' home for an extended visit. The visit was supervised by Robert Paper, a Department of Social Services worker. Paper characterized the visit as having gone poorly. He was particularly upset by the manner

Sherry was disciplined. Specifically, he did not like Tina hitting Sherry as a means of discipline instead of requiring her to sit in a corner as he suggested. Although Tina has hit her daughter, there is no evidence of child abuse, nor has she been charged with child abuse.

After spending the summer with her parents, Sherry was returned to a foster home at her parents' request. Dr. Gildea had an opportunity to examine Sherry and noted her speech had regressed. The doctor testified that once Sherry started school and became exposed to talking children her speech would improve. The reason her speech had regressed while with her parents was their inability to provide verbal stimulation.

In March 1977 a worker from Families, Inc., began an intensive in-home program to prepare the Wrages for Sherry's return. The program emphasized homemaking, child-care, budgeting, and household managment. Sherry returned in April 1977, and worker from Families, Inc., was present on a daily basis, averaging six hours a day. The Families, Inc., worker, Ann Buska, testified that after Sherry returned to the Wrage home, Christopher began to stay out past midnight several evenings per week and the Wrages began to have marital difficulties. Sherry was returned to foster care on June 7, 1977. Tina suffered a severe reaction to these developments and required hospitalization.

Since then, Tina and Christopher have apparently stabilized their lives. After years of employment as a laborer, Christopher has a job as a welder. His employer describes him as a good, reliable worker. Tina has been staying at home and doing the housework. There has been no visitation with the children, nor has there been any other involvement with any governmental agencies.

A hearing on a termination of parental rights was held November 29, 1977. The district court found a lack of parenting and guidance and ordered termination of the parental rights.

II.

Appellees concede the juvenile court could not terminate the parental rights of the appellates based on subsections 232.2(13)(b) and 232.2(13)(h), The Code 1975, since those subsections were no longer applicable when the termination petition was filed. If the judgment of the trial court is to be affirmed it must be based on subsections 600A.8(5) or 600A.8(6), The Code 1977.

III.

The issue here is whether appellants are unfit to be parents, § 600A.8(5), The Code 1977, or have failed to correct conditions harmful to their children's welfare, § 600A.8(6), The Code 1977. If either one of these grounds is established by clear and convincing evidence, the termination will be upheld. In re Voeltz, 271 N.W.2d 719, 723 (Iowa 1978); In re Kelly, 262 N.W.2d 781, 785 (Iowa 1978). We find the evidence is not sufficiently clear and convincing to support termination of parental rights.

The evidence proved Tina hit her child as a form of punishment. While the social worker may not have approved of this punishment, he did not believe it serious enough to file an action for child abuse. The court has consistently held parents have a right to inflict corporal punishment on their children so long as it is within the bounds of moderation and reasonableness. State v. Bell, 223 N.W.2d 181, 184 (Iowa 1974); State v. Fischer, 245 Iowa 170, 176-178, 60 N.W.2d 105, 108-109 (1953). We find nothing to indicate Sherry's spankings exceeded the bounds of moderation and reasonableness. The spankings therefore cannot serve as a ground for terminating the Wrages' parental rights.

The Department of Social Services was also concerned Tina was eating too much junk food and was not receiving well-balanced nutrituous meals. The evidence also indicated Ricky was underweight. Although the children may have been underweight and eating too much junk food, the evidence indicated neither child was suffering from malnutrition. Improper supervision of a child's diet and permitting a child to eat too much junk food are not sufficient grounds to terminate parental rights, unless there is shown a real and present danger to a child's health; there was no such showing here.

The State's concern about Sherry's health is valid. She is a sick girl whose health needs careful monitoring. The evidence does not indicate the Wrages do not care about their daughter's health, only that because of their handicap and lack of education they were slow at detecting a problem. There was testimony about a device used by deaf parents to detect when their child was crying at night that could be utilized by the Wrages to detect when Sherry is having a coughing attack. The use of such a device would greatly reduce future risk Sherry's coughing could develop into something more serious.

The State also introduced evidence the Wrages would leave their children with friends or neighbors, sometimes for several days, contending this is neglect. We disagree. The Wrages' realization the children should not be left alone demonstrates their understanding that children need care and supervision. In In re Voltz, 271 N.W.2d 719 (Iowa 1978), a mother who repeatedly left her children alone in potentially dangerous situations, where they had to satisfy their own basic needs, and continuously failed to provide proper food, clothing, and discipline, had her parental rights severed. Id. These facts are clearly distinguishable from those in the present case. The Wrages never left their children alone to fend for themselves. The children were always clothed and fed.

The State also argues Sherry's language skills developed more slowly when she was living with her parents than when she lived in foster homes. The evidence supporting this is clear and convincing. However, this court is not prepared to terminate parental rights because a physical handicap prevents the parents from providing verbal stimulation to their children. Dr. Gildea's expert testimony indicated Sherry's speech would catch up with other children her age when she entered school. Sherry is now about six years old and should be starting school, if she already has not; her speech difficulties should no longer be a problem.

The evidence the State has offered clearly and convincingly proved Ricky and Sherry could be better fed, better clothed, better educated, and possibly better disciplined by somebody else. It is true a good education is beneficial to a child's best interests and welfare, and an opportunity to acquire one should be afforded the child. There is also the probability the foster homes Ricky and Sherry would be placed in have certain advantages that they may never experience if left with Tina and Christopher, including the possibility of a better social background with economic security. But, these advantages, regardless of how desirable, cannot serve as a basis for terminating a parent-child relationship; neither can the Wrages' physical handicaps and accompanying problems. See Wardle, 207 N.W.2d at 564.

We find none of the incidents pointed to by the State, even when aggregated, justifies terminating the Wrages' parental rights. See In re Robbins, 230 N. W.2d 489, 491-94 (Iowa 1975). No serious threat to the health or development of the children has been substantiated. The Wrages have cooperated with the agencies trying to help

them. The improvements made may have been too few, and the time required perhaps too great to make it seem rewarding for the workers involved, but appellants have demonstrated with reasonable probability that their performance will improve. Most importantly, the Wrages are trying to improve their life-style. Christopher now has a good paying job and he appears to be working diligently at it. Tina is staying home and trying to be a good homemaker.

We hold the juvenile court erred in holding Christopher and Tina's conduct was likely to be detrimental to the physical and mental health and morals of their children, Ricky and Sherry. We find the best interests and welfare of Ricky and Sherry would be best served by permitting them to remain with their parents. This matter is therefore remanded to the juvenile court with directions to set aside its order terminating the parental rights of Chris and Tina Wrage and to order return of Ricky and Sherry to them. The juvenile court should maintain jurisdiction over the parties and the Department of Social Services should continue to offer the Wrage family any assistance they might need. The judgment of the juvenile court is reversed and remanded for entry of an appropriate order.

REVERSED AND REMANDED.