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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **IN THE INTEREST OF M.W.K., M.L.K., and O.F. III, Children,** | ) | Filed January 28, 1987 87 |
| **O.F., Sr., and H.F., Grandparents,** Intervenors-Appellants. | ) | 6-439 / 86-177 |

Appeal from the Iowa (Juvenile) District Court for Polk County (5502-12, 5503-12, 5504-12) - Vincent Hanrahan, District Associate Judge.

The paternal grandparents of the child, O.F. III, appeal the dispositional order of the juvenile court placing their grandson in foster care. **AFFIRMED AS MODIFIED.**

Eric Borseth of Wright, Wright & Borseth, Des Moines, Iowa, for intervenors-appellants.

Thomas J. Miller, Attorney General of Iowa; Kathrine S. Miller-Todd, Assistant Attorney General; and Ray Blase, Assistant Polk County Attorney; for appellee State.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

The paternal grandparents of the child, O.F. III, appeal the dispositional order of the juvenile court placing their grandson in foster care. We affirm as modified.

The child in question is a boy born in 1983. On November 16, 1984, O.F. III, and his two half-siblings, were removed from the parental home following allegations of sexual and physical abuse. At the temporary removal hearing held on November 26, 1984, the grandparents requested placement of O.F. III in their home. The court ordered O.F. III's placement to continue with the Department of Human Services. On March 27, 1985, all the children were adjudicated children in need of assistance. On December 23, 1985, the dispositional hearing was held. The court ordered that the legal custody of all the children continue in the Department of Human Services for the purpose of continued foster care. O.F. III's paternal grandparents, who were intervenors in the juvenile court proceedings, are appealing the dispositional order. They contend that O.F. III should have been placed with them rather than in foster care. In the alternative, the grandparents contend that the juvenile court should have provided a specific visitation schedule for them.

Our review in this matter is de novo. In Interest of Leehey, 317 N.W.2d 513, 515 (Iowa Ct. App. 1982). Our first and governing consideration is the best interest of the child. Iowa Rule of Appellate Procedure 14(f)(15). Iowa Code section 232.102(1)(a) (1985) provides that relatives may be granted legal custody after a dispositional hearing. The issue posed by this case is whether the best interest of O.F. III would be better served by foster parent placement or by placement with his grandparents.

The State contends that the best interest of O.F. III would be best served by foster home placement. The principal reason advanced by the State in

support of its position is that foster home placement for O.F. III would better serve the goal of maintaining the sibling relationship. After the removal of the children from the family home, the older brother was placed in a hospital, the sister was placed with a foster family and O.F. III was placed with her. O.F. III was subsequently removed from that placement and at the time of the hearing. The older brother and O.F. III were placed in the same foster home. The sister is in a foster home in the same community as the older brother and O.F. III. Apparently, all three children average seeing each other twice per week.

The benefit of sibling association is one of a number of factors which must be considered in determining what custody award should be made. In re Marriage of Wahl, 246 N.W.2d 268, 270 (Iowa 1976). Although we ordinarily endeavor to keep children of a broken home together, the rule is not ironclad and circumstances may arise which demonstrate that separation may better promote the long-range interests of the children. In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981). We do not, however, separate siblings unless there are compelling reasons to the contrary. In re Marriage of Gonzales, 373 N.W.2d 152, 155 (Iowa Ct. App. 1985).

The facts of the present case do not show that the children as a group entity will necessarily be best served by having O.F. III placed in a foster home. The older brother has already experienced some difficulty with the therapeutic setting of a treatment facility and continues to struggle with the emotional effects caused by the parental abuse. The sister has also been traumatized by past sexual abuse. O.F. III was not sexually abused, as were the two older children, although he was found to have been roughly shaken and slapped by the mother. One of the State's witnesses, Jeanine Gazzo, the guardian ad litem for the children, recommended that O.F. III stay in foster care so that

the brothers and sister could "lean on each other, and get a sense of family that they need." She suggested the children "need each other" to support each other and since "they have found it's difficult to trust any adult because the adults they put their trust in the most betrayed them." While these observations may be valid for the older, sexually abused siblings, an analysis is not provided as to how a three year old can assist the other siblings in overcoming their trauma, how the three year old will benefit, and whether the stress of helping the older siblings will itself cause problems for O.F. III. The guardian ad litem testified, "I guess you could say my decision was made in that I think they belong in foster care together. Therefore, I didn't think it was necessary to interview [the paternal grandparents]."

A social worker, Pat Miller, based her recommendation that O.F. III stay in foster care because she wanted to "maintain a sibling relationship with these children." Ms. Miller testified as follows:

> Q. Have you visited the [parental grandparent] residence?
>
> A. No, I have not.
>
> Q. So is it a fair statement then that you have not considered them for placement at all?
>
> A. I--yes, that's a fair statement.

Michael Hindley, a juvenile court officer, testified in response to a question regarding the placement of O.F. III with the paternal grandparents:

> Well, all I can go back to is—would be Dr. Sue McNeil and her recommendation of the siblings staying together, and the fact that she stated that [the half-sister] was worried about [O.F. III] being taken from the foster home, and plus [the half-brother's] going to need the relationship. He's very close to him. He was—has felt bad about being away from them, and to do it again would possibly cause him problems.

Mr. Hindley testified that he had nothing negative to offer regarding the paternal grandparents after running a background check. He testified, "the only objection

I have for [O.F. III] staying there [with the paternal grandparents] is breaking up the sibling relationship farther than it already has been."

From the above testimony and the conclusion of the court, it would appear that the sibling relationship was given primary consideration and this consideration was not adequately balanced against the benefits which would accrue to O.F. III from being placed with the paternal grandparents.

Another reason offered by the State for keeping the children together was that the reuniting of the children with the mother, now serving a prison sentence for sexual abuse of these children, could best be facilitated by keeping all three children together. Furthermore, the State contended that sexual abuse runs in families and the paternal grandparents were obviously part of the same family as the sexually abusing father. A question was also raised as to the ability to protect the child adequately since the grandparents lived next door to the sexually abusing parents during the time the abuse took place. Furthermore, the State expressed concern that the paternal grandparents were not fully convinced of the guilt of their son and his attitude might not be beneficial for O.F. III.

The State offered no guarantees that the three children would definitely be placed in the same home, that they would continue to stay in the same home, or that O.F. III would never be moved from a home in which one or more of his siblings resided.

In In the Interest of J.R. and S.R., 315 N.W.2d 750, 751 (Iowa 1982), the Iowa Supreme Court said that grandparents have a legal right to be considered as guardians of their grandchildren. In that case the court said, "While there is concededly a risk in providing an opportunity for future neglect by their parents, the quality of the proposed [grandparents'] home in this case and the desirability of maintaining an identity with the children's natural family outweigh

the benefits of an anonymous adoption." Id. at 753. The grandparents in this case have shown themselves to be quality providers of child care services both to O.F. III and to other children. The paternal grandparents appear to have been the primary caretakers of O.F. III from his infancy until his removal at approximately twenty months of age. The paternal grandparents received the child in the morning from the mother and provided care for him until the mother returned from work. The paternal grandmother testified that she also had primary care of O.F. III during some weekends. The grandparents fed, clothed, and bathed the child as well as providing other services such as taking him to doctor's appointments. There were no assertions by any party that these paternal grandparents did not care for and love O.F. III. The paternal grandparents are also licensed foster care providers. Their home was considered a therapeutic placement for children with emotional or behavior problems. Their supervisor, Mr. Fortney, testified that they were commendable as foster parents. They are considered to be sensitive to a child's needs, and providers of good role models for children. No investigation of the paternal grandparents and no testimony presented at the hearing suggested that they were anything other than competent foster care providers and caring and loving grandparents.

We do not think that the possibility of the future placement of the children with the mother is a sound reason for keeping O.F. III in foster care. We do not think that the argument that sexual abuse runs in families is a sound reason for keeping O.F. III away from the grandparents. As appellants point out, this argument might just as well suggest that O.F. III should not be placed with abused older siblings or, later, with the abusive mother. Absolutely no evidence was provided suggesting that the paternal grandparents were abusive. On the contrary, as therapeutic foster care providers, the grandparents are under close scrutiny by the State and no suggestion was ever made that any

abuse was found in their household. Without any specific evidence provided, we do not believe that generalizations about patterns of sexual abuse in families should be allowed to implicate a particular set of parents in the sexually abusive behavior of their adult offspring. Similarly, no evidence was provided that the grandparents should have been aware of the abusive acts of the parents. By their very nature, such crimes are kept extremely secret by dint of fear and shame. There was also testimony at trial that the father did not have a close relationship to his parents. There is no reason to believe that the grandparents were negligent or willfully ignorant in recognizing that sexual abuse was taking place in their son's household. Furthermore, it is not surprising that parents would hesitate to quickly acknowledge the full extent of their son's transgressions. However, the record does not show that the parents were denying their son's guilt, only that they were confused and unsure of all of the circumstances. Mr. Fortney, the counselor and foster care worker for Iowa Children's and Family Services and supervisor of the paternal grandparents foster care work, testified that the role of foster parents should not include discussion of the touchy issue of the child's sexual abuse and that counseling or therapy should be left to counselors and therapists. We do not believe that the paternal grandparents should be penalized for any confusion they might be suffering in these circumstances. This is particularly true where the role of talking to and counseling children in these matters is not one given to foster care providers.

We also think that continuity of care is more likely to be found with caring grandparents than with one or more foster homes. The grandparents are also closely supervised by the Iowa Children's and Family Services and we can expect that if any difficulties arise in the household appropriate authorities will be immediately notified. The father is now serving a 75-year prison

sentence for sexual abuse of the children so there is no foreseeable difficulty in the grandparents being unable to keep the father from having any contact with O.F. III.

In light of the foregoing, we find that an examination of all the relevant circumstances requires that O.F. III should be placed with his paternal grandparents. His best interest, as of this time, clearly will be served by the continuity of care and affection that his grandparents can offer.

**AFFIRMED AS MODIFIED.**