

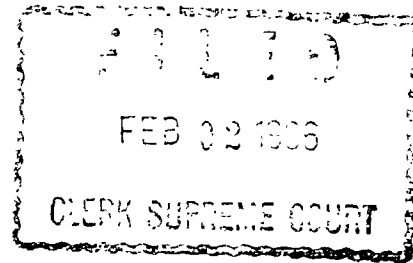
IN THE COURT OF APPEALS OF IOWA

No. 5-616 / 95-293

IN THE INTEREST OF J.D.B., A Minor Child,

S.B.H., Mother,

Appellant.



Appeal from the Iowa District Court for Linn County, Patrick R. Grady,
Associate Juvenile Judge.

Mother appeals the juvenile court's permanency order placing her child in the
custody of the Department of Human Services for purposes of long-term foster care.

REVERSED AND REMANDED.

John Broz, Cedar Rapids, for appellant.

~~Thomas~~ J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, ~~Richard~~ E. Ramsay, Assistant Attorney General, and Rebecca Belcher,
Assistant County Attorney, for appellee-State.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

SACKETT, J.

The question in this case is whether Jacey, born in April 1986, should be placed in long-term foster care or whether additional efforts should be made to see she is returned to her mother's home. The juvenile court found long-term foster care was in Jacey's best interest. The mother, Stacey, appeals contending (1) long-term foster care is not in the child's best interest, and (2) the finding she needs to complete her parole before her child is returned to her is erroneous. We remand.

Jacey and her half-brother first came to the court's attention in July 1990. A petition was filed asking they be found children in need of assistance. Stacey agreed the children could be found to be children in need of assistance on the grounds of the "parent's failure to exercise a reasonable degree of care in supervising the children." The juvenile court found the children to be in need of assistance on this basis. Jacey's father was absent from all proceedings. The father of Jacey's half-brother was seeking physical care of him in an action in district court. Eventually his care was transferred to his father and he is no longer a part of these proceedings.

~~After the~~ children were found to be children in need of assistance they remained ~~in~~ Stacey's care. There were alleged problems because Stacey was not attending appointments and programs geared to sexual abuse problems. Stacey complained attendance was made difficult by her job and other responsibilities.

In January 1991, the children were ordered placed in foster care because Stacey allegedly was homeless. A review of the file indicates problems with Stacey's

housing situation was the reason the children were removed. It was ordered the children be placed in foster care until Stacey found a home. There was no finding any reasonable efforts were made to assist Stacey in finding adequate housing. There is a requirement reasonable services be offered to preserve the family unit. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994); *In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *In re B.L.*, 491 N.W.2d 789, 791-93 (Iowa App. 1992) (Donielson, J., dissenting); *In re M.D.S.*, 488 N.W.2d 715, 717-20 (Iowa App. 1992) (Habhab, J., dissenting); *In re A.W.*, 464 N.W.2d 475, 478 (Iowa App. 1990) (Schlegel, P.J., concurring in part and dissenting in part). Stacey did not challenge the court's failure to address the reasonable efforts issue. Parents need to challenge the lack of delivery of services when the services are needed. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993).

Stacey did not follow the court order and turn the children over to the custody of the Department of Human Services but, in her frustration at having lost the right to have them in her custody, moved with the children to the state of Nebraska. A further ~~order~~ **order** was then entered that the children be placed in foster care and not returned ~~to~~ **to** their mother when they were located.

In early April, the Iowa Department of Human Services found Stacey and the children. On April 10, 1991, Jacey was placed in a foster care home under the direction of the Iowa Department of Human Services. That placement lasted less than three days. On April 13, 1991, Jacey was placed in St. Lukes. Then on April 19,

1991, Jacey was placed in another foster care home where she was physically abused. On April 23, 1991, she was placed in Tanager Place. Since that time Jacey has been in other homes and facilities, including a psychiatric mental institute for children. She has been medicated with methylphenidate and imipramine.

Stacey has continued to be involved with Jacey's care. She has taken advantage of the visitation she was allowed. Stacey has challenged certain foster placements¹ and objected to application for medications for Jacey. The court subsequently ordered the medications. Stacey has also cooperated with a number of programs, has been in constant contact with Jacey, and is interested in her well being. Jacey has an extremely strong attachment with Stacey and adoption has not been recommended.

Stacey was charged and convicted of violating the custody order and placed on probation. At a hearing in June 1994, the juvenile court adopted the recommendation of the State and the guardian ad litem that Jacey be placed in foster care with the plan she be returned to Stacey's care pending (1) a child abuse investigation and (2) Stacey and her current husband completing a substance abuse treatment program.

In September 1994, Stacey's probation was revoked. Stacey was placed in Mitchellville because she had used marijuana while on probation. A hearing was held from which this appeal is taken. At the time of the hearing, the release date of Stacey

¹ Stacey argues, after all, in at least one home Jacey was physically abused and she had a valid reason to complain.

was not certain. The juvenile court ordered permanent foster care.

Stacey challenges this order. She contends it is not supported by the evidence. Stacey contends there is no evidence her use of substances and the use of substances by her current husband adversely affect their ability to care for Jacey. She argues Jacey wants to be with her and she wants her. Stacey advances she has cooperated to a substantial extent with the programs and hurdles which have been set up. Stacey admits she has not always been totally cooperative but points out she was justified in complaining about Jacey's unsatisfactory foster placements and we agree.

In child in need of assistance proceedings, we review the evidence de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact because that court has had the unique opportunity to hear and observe the witnesses firsthand. *In re S.V.*, 395 N.W.2d 666, 668 (Iowa App. 1986).

This case comes to us with a voluminous file. A review of this file showing all the problems Jacey has experienced through multiple placements while in state care only ~~supports~~ recent studies which show greater efforts need to be made to allow children ~~to be~~ in their homes. *In re T.W.W.*, 449 N.W.2d 103, 104 (Iowa App. 1989) (Donielson, P.J., concurring in part and dissenting in part).

Jacey, a child with a high IQ and a love of her mother, has had a stormy and rocky journey through the foster and institutional care system for the past five years. During her years there, Jacey has manifested serious emotional problems. Whether

these problems are the result of Stacey's actions or the result of Jacey being taken from Stacey and put into a series of placements is not entirely clear. What is clear is substantial state resources have gone into this case with minimal success. In the order appealed from placing Jacey in permanent foster care, the juvenile court opined she probably would end up as a teenager in residential care.

Stacey was incarcerated when the hearing to place Jacey in permanent foster care was held and Stacey's release date was not certain. In addition to violation of the custodial order, Stacey had an underage drinking offense as a teenager and has been arrested for fifth-degree theft, assault, and criminal trespass, as well as nonpayment of fines.

Jacey was not found to be a child in need of assistance based on sexual abuse or Stacey's substance abuse problems. No one points to any evidence Stacey's use of substances prevents her from adequately caring for Jacey. The major problem for Stacey has not been her inability to care for Jacey or lack of love for the child. The major problem seems to be Stacey has not attended particular classes and programs. Yet, the ~~children~~ were initially removed from her care because she was homeless.

For ~~the~~ five years this child has been in the custody of the state. She has been in numerous programs and placements. A substantial number of social workers, judges, and attorneys have been involved in the case. The state has spent considerable resources for court personnel, social service personnel, hospitalization, institutional placements, as well as foster care placements.

The failure of Stacey to attend specific classes has been a stumbling block. Her failure to have more evaluations was the road block for Jacey's return in June 1994. The scheduled classes were not specifically directed at the problems originally identified. There is nothing in the record showing why the scheduled classes were relevant or necessary. The record is void of evidence of (1) the curriculum, (2) the instructors, or (3) the success rate of the classes. Stacey has shown substantial compliance with a number of programs.

The record contains very sketchy information on the plans for permanent foster care. Looking at the state's past record of caring for Jacey, we cannot assume future foster placements will be satisfactory. The finding of the juvenile court in ordering this placement suggests it is fearful foster home care will not be successful. The state has not provided Jacey with any consistency in care givers. The only consistent person in Jacey's life has been Stacey; and despite Jacey's bonding with Stacey, the focus of permanent foster care is to severely curtail Stacey's involvement in Jacey's life. Preserving families is the underlying principle behind these proceedings. *C.D.*, 508 N.W.2d at 100.

~~We cannot~~ find it is in Jacey's best interest to severely curtail Stacey's place in her life. We reverse the permanency order and remand for a hearing on the issue of reunification.

REVERSED AND REMANDED.