IN THE COURT OF APPEALS OF IOWA

No. 2-247 / 91-1667

FILED
AUG 27 1992
CLERK SUPREME COURT

IN THE INTEREST OF E.A.T., C.R.T., and A.P.T., Minor Children,

J.T., Mother,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. McCollum, Juvenile Court Referee.

Mother appeals an adjudicatory hearing and dispositional order finding her children to be children in need of assistance. **AFFIRMED.**

Richard L. McCoy, Sioux City, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Michael O'Brien, Sioux City, guardian ad litem for the children.

Heard by Sackett, P.J., and Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The mother, J.T., appeals from the rulings of the juvenile court referee that found her three children, E.T., C.R.T. and A.P.T., to be Children In Need of Assistance and the dispositional order that ensued placing the children with the paternal grandmother.

We affirm both orders.

J.T. and C.T. are the natural parents of E.T., a daughter born September 20, 1979; of C.R.T., a son born April 8, 1985; and of A.P.T., a daughter born February 7, 1989. The adjudication complained of was entered on September 3, 1991, and the dispositional order appealed from was entered September 24, 1991. E.T. was twelve years of age at the time of the latter order. C.R.T. was almost six and one-half years of age, and A.P.T. was two and one-half years of age at that same time.

Our review is de novo. In re L.K.S., 451 N.W.2d 819, 821, (Iowa 1990). Although we are not bound by the findings of the juvenile court, we give weight to such findings since that court had the opportunity to "hear and observe the witness firsthand." In re S.V., 395 N.W.2d 666, 672 (Iowa App. 1986).

Our polestar is to determine the best interests of the children and how to best serve them. To that end we liberally construe the provisions of Iowa Code chapter 232. In re N.M.W., 461 N.W.2d 478, 480 (Iowa App. 1990); In re B.B., 440 N.W.2d 594, 596 (Iowa 1989).

J.T. and C.T. were undergoing an acrimonious dissolution of their marriage during the forepart of 1991. J.T. had custody of the three children during that period and particularly in April of 1991 during the pendency of the dissolution.

Both parents had extensive histories of illicit drug use and chemical dependency, which have given rise to a number of other problems that this family experienced as a unit. Both have attempted to deal with these problems, but an evaluation of J.T. reflects that she has not yet addressed her substance abuse problem. C.T. had undergone several treatment programs only to relapse and at the time of the hearings in these matters was either in substance abuse treatment or was residing in a halfway house subsequent to in-patient treatment.

During the pendency of the dissolution, J.T. acquired a new male friend, one R.M., and she and R.M. planned to go from her Woodbury County home to Iowa City for the weekend commencing Friday, April 12, 1991.

On that day J.T. and her daughter, E.T., had an angry dispute with both parent and child using some physical force. E.T. then left the home while J.T. and her friend, R.M., left for Iowa City for that weekend.

Part of the problems between J.T. and her daughter, E.T., and to a lesser degree, problems J.T. had with the little boy, C.R.T., was the finding by the children of

illicit drugs in the home and disposing of them by either hiding them or flushing them down the drains.

When J.T. left for Iowa City with R.M. she had arranged for adult daytime child care for the three children. It should be noted at this juncture that J.T. did not advise any responsible person as to where she could be contacted during the ensuing weekend should problems arise with the children. The evening and night care of the children was left by J.T. to two other persons apparently unrelated, a young brother and a young sister who lived in an apartment above the apartment occupied by J.T. and the children. When J.T. left for Iowa City she did not know the whereabouts of E.T., but asked another person to call several residences where E.T. might be found. She never made any personal efforts to determine where E.T. might be.

Both J.T. and C.T. were most unwise in discussing with the children the other parent's purported faults or dangers that might be incurred by the other parent. These comments were particularly upsetting to E.T.

J.T.'s paramour, R.M., had serious charges pending against him during this period ranging from assault to unlawful possession of controlled substances. J.T., however, saw no correlation between her care of the children and their deep involvement on a daily basis with R.M. She believed that such contacts by R.M. with her children posed no problems and believed whatever R.M. did

was of no particular consequence to her or her young family. Concerns for the well-being of the children during the weekend that J.T. was in Iowa City prompted an emergency placement of the children by an appropriate authority. They were placed with the paternal grandmother where they remained until the dispositional hearing which confirmed that placement.

The later hearing was held during the latter part of September 1991. The children were with the paternal grandmother from mid-April 1991 to the time of the disposition, the latter part of September 1991. The grandmother testified as to the improvements the children had experienced while in her home. J.T. did not attend the dispositional hearing.

The dispositional order contained a number of beneficial provisions -- J.T. was to commence outpatient treatment and therapy; C.T. was to continue involvement in A.A.; the two older children were to attend ALATOTT and ALLATEEN meetings. Visitation between the children and the father was within the sound discretion of the Department of Human Services and visitation between J.T. and the children would be arranged by the department on a supervised basis. The order further directed there would be no contact between the children and R.M. A case progress report was to be submitted to the juvenile court prior to a review hearing.

During this unhappy period of time E.T. resisted visitation with her mother. One visitation by J.T. of the children in the grandparents' home resulted in an angry confrontation for which J.T. subsequently tendered an apology. J.T. did not follow the dictates of visitation ordered by the department prior to the adjudication and dispositional hearing, which conduct on her part caused the juvenile court to wonder if J.T. could be trusted to follow any rules concerning visitation.

We find the juvenile court referee by clear and convincing evidence found the children to be in need of assistance. The court similarly made an appropriate disposition of their placement during the period of time that the juvenile court and the Department of Human Services are extending services in an effort to reestablish relationships between the children and both parents.

We agree with the holdings of the juvenile court referee found in the adjudicatory and dispositional orders and therefore confirm those rulings.

AFFIRMED.

Habhab, J., concurs; Sackett, P.J., dissents.

SACKETT, J. (dissenting)

I dissent.

I would remand this case to the juvenile court to conduct a hearing to determine if with reasonable efforts the children could be returned to their parental home. The file before us does not show that the issue of reasonable efforts was ever addressed at the juvenile court level despite strong state and federal dictates that it be done. Before ordering a removal the trial court must find that reasonable efforts have been expended to attempt to keep the family together. See Iowa Code § 232.102(1), (2).