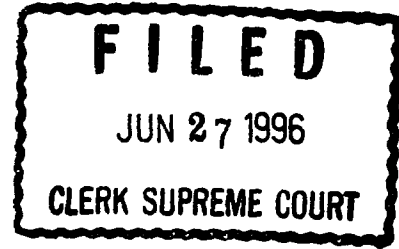


IN THE COURT OF APPEALS OF IOWA

No. 6-277 / 95-2009

IN THE INTEREST OF A.S. and A.S., Minor Children,
J.S., Father,
Appellant.



Appeal from the Iowa District Court for Dickinson County, Cameron B. Arnold, District Associate Judge.

Father appeals from entry of permanency order in this child in need of assistance action. **AFFIRMED.**

David J. Stein, Jr., Milford, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Bethany Verhoff Brands, Assistant County Attorney, for appellee State.

Shannon Sandy, Spirit Lake, guardian ad litem, for appellees minor children.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

HABHAB, J.

Jim and Pam have two daughters, Am.S., born March 3, 1985, and Al.S., born August 14, 1988. The couple had a history of drug abuse and family violence. Jim and Pam divorced in 1990. The dissolution decree granted the couple joint custody and placed the girls in their mother's primary care. Pam then had another daughter, S.B., born November 1, 1990, by another man.

In November 1993, Pam was arrested for operating a motor vehicle while intoxicated; S.B. was in the car with her at the time. Jim refused to return Am.S. and Al.S. to Pam from a subsequent visitation, citing Pam's conduct as the basis for his action. Charges were filed against Jim by Minnesota authorities since Jim resided in Minnesota at the time. The children went back to Pam, but on December 28, 1993, the Iowa juvenile court granted the State's application for an ex parte emergency removal order, placing all three girls in the temporary custody of an aunt and uncle.

On January 6, 1994, the juvenile court ratified the girls' placement with their aunt and uncle. Jim was allowed visitation as provided by the dissolution decree and a home study of Jim's Sherburn, Minnesota, home was ordered. On January 19, 1994, the children were adjudicated children in need of assistance. The dispositional hearing originally set for March was continued because the home study was not completed. It was again continued in May because Jim's "home study has not been completed as he has moved on numerous occasions and has been uncooperative in providing his current address."

On June 24, 1994, the juvenile court entered an order which continued the girls' placement with their aunt and uncle. The court allowed Jim visitation, but ordered him to avoid the use of controlled substances. The court ordered Jim to provide the Department of Human Services with his current address and any change of address. The department was ordered to arrange a drug and alcohol evaluation for Jim.

On October 3, 1994, a dispositional order was filed. The court found Jim physically abused Pam on a weekly basis during their marriage. The court also found both Jim and Pam frequently used cocaine, crank, and marijuana, with some of the drugs being taken intravenously. The court found "it appears that Jim has resolved his drug abuse problem and has not used drugs since 1992." The court further noted Jim and his current wife had moved nine times in two years, had three children then living in the household, and Jim was unable to maintain steady employment. The court found Jim was in need of inpatient alcohol treatment, which he had failed to obtain at that time, and was diagnosed with a bipolar disorder for which he was on medication and which contraindicated the use of alcohol. The court noted Jim cared deeply for Am.S. and Al.S., but the "introduction of two additional children into Jim's household at this time would result in the children not receiving adequate care." The court found "evidence of a stable home, steady job and appropriate steps to maintain sobriety will be necessary before the court can find a return of Am.S. and Al.S. appropriate."

On December 30, 1994, a review order was filed. The court commended Jim on his “substantial progress in addressing and working towards resolving the issues of substance abuse and finance management.” The court also noted Jim had “begun to establish employment and residential stability.” Jim was granted expanded visitation and the court noted if reunification of the girls and their mother did not soon occur, placement with their respective fathers would be in the children’s best interests.

In January 1995, Jim’s wife left him. Jim visited the girls twice between December 29, 1994 and March 3, 1995. He did not visit or call between March 3 and May 2, 1995. On May 23, 1995, the court granted the State’s request for modification of the dispositional order and suspended Jim’s extended summer visitation. Further visits were to be supervised and allowed only upon a finding Jim was “alcohol- or drug-free” at the time. Jim did not visit the girls between May 13 and July 21, 1995, nor did he maintain contact with his attorney or the department. On July 28, 1995, his attorney was allowed to withdraw.

On August 17, 1995, S.B. was permanently placed with her biological father. Because Jim did not appear, the permanency hearing concerning Am.S. and Al.S. was ordered continued.

A permanency hearing was held on August 22, 1995. Jim’s brother testified Jim’s girlfriend called him the first week of August and asked for help because she and Jim had been using drugs heavily for five to seven days. Jim’s brother found Jim

strung out heavily on drugs and saw tracks on his arms most likely resulting from intravenous drug use. The brother had Jim involuntarily hospitalized for treatment. A department worker testified the girls should be permanently placed with their aunt and uncle. Jim testified he was not capable of parenting his children at that time and he did not even think he should be given a chance to parent the children at that time.

On September 22, 1995, a petition to terminate Jim's parental rights was filed by the State. Jim filed a resistance and an objection to the service plan and to the removal of the children.

On November 9, 1995, the juvenile court filed a permanency order placing the girls in the long-term care of their aunt and uncle. Jim's visitation rights were suspended pending further order of the court.

Jim appeals the permanency order.

I. Scope of Review. In CINA proceedings, we review the evidence de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern are the welfare and best interests of the child. *In re D.L.*, 401 N.W.2d 201, 202 (Iowa App. 1986). 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 first hand. *In re S.V.*, 395 N.W.2d 666, 668 (Iowa App. 1986).

II. Services. Jim contends proper social services were not provided to him to help correct his personal and parenting problems. Specifically, Jim contends the home study done in Iowa was favorable, he was never given the chance to raise the children, and the least restrictive disposition was not taken when the children were placed in foster care.

According to the notice of appeal, the only order that has been appealed is the permanency order filed on November 9, 1995. While Jim argues for a chance to parent the children in his brief, this argument must be viewed in light of the testimony he gave at the permanency hearing. At the hearing, Jim testified he was not presently capable of parenting the children and he did not want a chance to parent the children at the present time. Jim's testimony at the hearing provides a strong basis for denying Jim the opportunity to parent the children at this particular point in the CINA proceedings.

Jim also is concerned about the adequacy of the home studies and he contends the home study which was done in Iowa gave him a favorable review. Jim argues this favorable review was not properly taken into account by the district court. While the study certainly did find Jim maintained a clean home and continued contact with his children, the study also found Jim had some disturbing personal problems. The study found Jim had moved numerous times over recent years and he gave inconsistent information regarding these moves. Even more damaging was the study's finding Jim has a serious substance abuse problem and has shown a lack of follow-through on his

outpatient treatment. We find Jim's interpretation of the home study cannot be supported since the seriousness of the concerns raised in the study substantially outweigh the positive findings in the study.

Finally, we find the district court's decision to place the children in a foster home rather than placing the children with Jim was the least restrictive disposition available to the court. In addition to Jim's testimony at the hearing that he could not and did not care for the children at the present time, there was much evidence provided regarding Jim's substance abuse problems. Jim's brother testified he found Jim so strung out on drugs a couple of weeks before the permanency hearing the brother sought to commit him. It was determined Jim's prognosis for recovery was so poor inpatient treatment was not worth the effort. We conclude the district court did not err in reaching its decision in the permanency order regarding the placement of the children.

III. *Attempts at Reunification.* Jim contends the district court erred in entering its permanency order since meaningful attempts were not made to reunify the family. We disagree.

In the dispositional review in October 1994, the district court commended Jim for substantial progress in the areas of residential stability and substance abuse. In an order filed in December 1994, the district court extended Jim's visitation rights because of his efforts.

Jim was unable to take advantage of these extended visitation rights. After separating from his wife in early 1995, his visitation with the children became sporadic. In addition, the evidence appears to indicate Jim's substance abuse problems recurred with great force. We find the district court made an attempt to provide Jim with increased visitation which could have aided in reunification and Jim failed to take advantage of the opportunity.

IV. Visitation. Jim argues the district court erred in denying him visitation. Our paramount concern is the best interests of the children. *In re N.M.W.*, 461 N.W.2d 478, 480 (Iowa App. 1990). As was previously mentioned, Jim did not come close to taking full advantage of the extended visitation rights extended to him by the district court in early 1995. Also, Jim's difficulty with severe substance abuse resurfaced in 1995. Finally, Jim acknowledged in the hearing he was not ready or capable of caring for the children at the present time. We conclude the district court properly determined visitation with the children would not be appropriate or productive at this point in the CINA proceedings.

We affirm the permanency order filed by the district court in November 1995.¹

AFFIRMED.

¹ We note the guardian ad litem for the children takes the position that the permanency order of the juvenile court should be affirmed. This, of course, does not bind us in our decision, but we do give weight to the recommendations of the guardian ad litem.