IN THE COURT OF APPEALS OF IOWA

No. 7-638 / 97-0551

000293

FILED
JAN 28 1998
CLERK SUPREME COURT

IN THE INTEREST OF T.P. and B.P., Minor Children,

B.P., Mother of T.P.,
Appellant,

J.P., Grandmother of B.P.,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Court Judge.

A mother and grandmother appeal from an order confirming the removal of two children from the family's home and their placement in the custody of the Department of Human Services. **AFFIRMED.**

Susan R. Stockdale of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant B.P.

Barbara Durden Romar, Des Moines, for appellant J.P.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee State.

Martha L. Johnson, Des Moines, for minor children.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

A mother and grandmother appeal from an order confirming the removal of two children from the family's home and their placement in the custody of the Department of Human Services. We affirm.

Janet and Michael Sr. are the parents of Eileen, Brandy, and Michael Jr. Michael Jr. carried on an incestuous relationship with his two sisters while living in the family home. Eileen began having sex with Michael Jr. at age ten and gave birth at age fifteen to Bryan on June 21, 1989. She later married, but continued her relationship with her brother and gave birth to Samantha on October 6, 1992. Brandy gave birth at age fourteen to Tiffany on September 28, 1992. Michael Jr. is the father of all three children. This appeal, however, only concerns Bryan and Tiffany.[1]

Bryan has cerebral palsy, is severely retarded and developmentally delayed, and has a seizure disorder. Eileen has not been involved in his parenting. His grandmother, Janet, has been named guardian and she appeals on his behalf. Brandy appeals with regard to Tiffany.

An emergency removal report was filed on July 26, 1996, indicating Bryan and Tiffany had been removed from the home of Janet and Michael Sr. due to imminent danger to life or health. The police were called by neighbors at 3:00 a.m. on that date because of noise coming from the house. Upon arrival, the police found Bryan,

---

[1] Samantha was allegedly sexually abused by one of her mother's paramours and is now the subject of a separate child in need of assistance proceeding.

Tiffany, and two other family children running around the house naked, crying, and screaming. The children were filthy and infested with head lice. The house was dirty and infested with cockroaches. Cat feces was discovered in the bathtub, and spoiled food and dirty diapers were on the kitchen counter. The only adult in the house was found sleeping in a bedroom.

An agreement was reached at the temporary removal hearing on August 14, 1996, which called for the children to be returned to Janet's home because the physical conditions of the house had improved. It was stipulated at the adjudication hearing on September 12, 1996, that both Tiffany and Bryan were children in need of assistance.[2]

The ongoing investigation included paternity testing. Both Michael Sr. and Michael Jr. were ordered to undergo the tests. The results of the tests were made available on September 17, 1996. They showed that Michael Jr. was the father of Bryan, Tiffany, and Samantha. That same day, the juvenile court entered a no-contact order prohibiting Michael Jr. from having contact with any of the females residing in the household with the exception of his mother, Janet.[3] The children were removed a second time on September 18, 1996. Tiffany was placed in foster care and Bryan

---

[2] The parties do not appeal the first temporary removal hearing or the adjudication of CINA. Both occurred while the investigation was continuing and before Michael Jr.'s paternity was established.

[3] On February 25, 1997, Michael Jr. was sentenced to two five-year consecutive terms on two counts of lascivious acts with a child. The victim was his wife's ten-year-old cousin.

was eventually placed at Glenwood State Hospital School because of his special needs. He was reinfested with head lice after visits by Janet and Michael Sr.

The temporary removal hearing began on October 1, 1996, and was continued for further hearing on October 7, 1996. Following the second day of hearings, the juvenile court decided to combine the removal hearing with the dispositional hearing since the adjudication of child in need of assistance had already been entered on the children and because of the expected length of the hearings. Four additional hearings were held on November 20, December 3, and December 23, 1996, and February 28, 1997. The juvenile court entered a ruling on this matter on March 13, 1997, affirming the prior removal order and setting dispositional placement for the children.

Brandy appeals and argues: (1) the temporary removal of her daughter was not appropriate or necessary; (2) the continued removal of her daughter is not an appropriate disposition; and (3) the juvenile court erred when it sustained the State's objection to testimony regarding the imminence of the danger to her daughter.

In her appeal, Janet argues: (1) the State failed to meet its burden to prove her grandson should have been removed from her home; (2) the court erred in combining the dispositional portion of the matter with the removal hearing without first determining whether the State had met its burden on the removal issue; and (3) continued placement of the child out of the home is not an appropriate or supportable disposition.

I. SCOPE OF REVIEW. Child in need of assistance proceedings are reviewed de novo. *In the Interest of A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1993). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. The primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). Insight can be gained on the issue of best interests by evidence of the parents' past performance. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

II. COMBINATION OF REMOVAL HEARING AND DISPOSITIONAL HEARING. Janet alleges the juvenile court erred in combining the dispositional portion of this case with the removal hearing without first determining whether the State met its burden on the removal issue. Brandy does not contest this consolidation. This is a general claim which alleges the burden for placement in a dispositional hearing is less than that in a removal hearing.

We agree with counsel for the State and the children that nothing in Iowa Code chapter 232 prevents such a combined hearing, nor does Janet cite us to any authority which would prohibit the same. The juvenile court was certainly within its discretion to combine these matters, especially considering the number of parties involved, the length of the case, and the similar testimony and evidence. The hearings were combined early in the proceedings and no prejudice can be argued. The children had already been adjudicated children in need of assistance. In addition, the juvenile

court correctly applied the proper burdens of proof in the decision filed March 13, 1997. We affirm the juvenile court on this issue.

III. STATE'S OBJECTION TO TESTIMONY REGARDING IMMINENCE OF DANGER TO TIFFANY. Brandy argues the juvenile court erred in sustaining the State's objection to testimony concerning the imminence of danger to Tiffany if returned to her mother's home. The court sustained the objection, ruling the question invaded the province of the court. Evidentiary rulings are reviewed for abuse of discretion. *Guidichessi v. ADM Milling Co.*, 554 N.W.2d 563, 566 (Iowa App. 1996). This was an ultimate issue for the court to decide and it was well within the sound discretion of the juvenile court to sustain the objection. Even assuming arguendo the evidence should have been admitted, it was harmless error in light of the overwhelming nature of the evidence in this case. We affirm the juvenile court on this issue.

IV. APPROPRIATENESS OF TEMPORARY REMOVAL AND CONTINUED REMOVAL OF THE CHILDREN FROM THE HOME. Both Janet and Brandy question the appropriateness of the temporary removal and continued removal of the children from the home. The juvenile court decision of March 13, 1997, contains the following statements:

> The home of [Janet] is a home where two of her daughters and one of her granddaughters have been sexually abused. A home where when two of her daughters claim their pregnancies were the result of rape, months after the alleged rapes, they were unquestioningly

> believed. A home where no questions were asked of a son accused of the impregnating of his own sister. A home where a fourteen year old girl and a fifteen year old girl could be nearly at term before their mother notices the pregnancies. This court is urged that this is a home where both Bryan and Tiffany can safely be returned and not suffer any adjudicatory harm. A home from where the children were inappropriately and unnecessarily removed. . . . The parties agreed to the adjudication. The fact the children were initially returned is not the issue. As the case has unfolded, the depth of the extreme lack of supervision has become known. A lack which has led to the birth of three children as [the] result of incestuous relationships between family members, sexual abuse of one of those children, and sexual abuse of an unrelated child by the father of the children in interest. Counsel's argument that a child in this environment is not at imminent risk to his or her life or health is disingenuous at best. Healthy children cannot be raised in a home where their father is also their uncle and their cousins are also half siblings and their parents and grandparents do not view or believe their actions were sexual abuse or molestation.
>
> . . . .
>
> . . . The court cannot know why this family has produced children with so many problems, however the court can prevent these children from being returned to that home until the children can be safe there. The court finds appropriate services have been offered to the mothers and the guardian through . . . in-home services and therapy. They have not made sufficient progress for this court to believe Bryan and Tiffany would be safe from further adjudicatory harm in any of their care at this time.

We agree with these statements of the juvenile court judge. We find this argument by both Janet and Brandy to be without merit.

We affirm the decision of the juvenile court in all respects.

AFFIRMED.