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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF A.C. and L.C., Minor Children,

C E and A.E.,

Petitioners-Appellants.

Filed March 9, 1988

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7-453
87-454

Appeal from the Iowa District Court for Pottawattamie County (57641), Paul H Sulhoff, Judge.

Petitioners, grandparents of two minor children, appeal the district court's denial of their application for grandparent visitation under Iowa Code section 600A 10 (1987). **AFFIRMED AS MODIFIED.**

Timothy O'Grady of Over, Over & Over, Council Bluffs, for petitioners-appellants.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the State.

William R. Hughes of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, as guardian ad litem for the children.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

The petitioners, grandparents of two minor children, appeal the district court's denial of their application for grandparent visitation under Iowa Code section 600A.10 (1987). The parental rights of the children's parents were terminated. The petitioners claim the district court erred by denying visitation between them and the children.

C.E. and A.E. are the maternal grandparents of A.C., born in 1973, and L.C., born in 1979. A.C. and L.C. were placed in foster care in 1981 and were found to be children in need of assistance on the basis that A.C. had been extensively sexually abused by his parents, G.C. and C.E.C., the daughter of C.E. and A.E. Both parents served prison terms because of their sexual involvement with A.C. C.E. and A.E. had visitation with the children until 1985, when the parental rights of G.C. and C.E.C. were terminated.

Custody of A.C. was placed with the Department of Human Services for foster care placement. It is not thought that A.C. will ever be adopted because of his age and his continuing behavioral problems stemming from being sexually abused. The custody of L.C. was placed with C.E. and A.E. This court reversed that decision based on a concern that C.E. and A.E. would permit L.C. to have contact with C.E.C., whom they still believed was innocent. Custody of L.C. was placed with the Department of Human Services.

In 1986 C.E. and A.E. filed this petition for grandparent visitation under Iowa Code section 600A.10 (this section has since been repealed). The district court denied the application, although it found that C.E. and A.E. had always cooperated with the Department of Human Services. The court found that visitation would be regressive for A.C. and may set back the progress he had made in therapy. The court also found that L.C. would be adopted more readily if the grandparents no longer had visitation, and that visitation might disrupt

L.C.'s relationship with any prospective adoptive parents. The district court concluded that it was not in the best interests of either child to permit grandparent visitation. Our scope of review is de novo. Iowa R. App. P. 4. We affirm as modified.

We initially address the visitation with L.C. Iowa has recognized the right of grandparents to petition for visitation and a district may grant such a right upon a finding that visitation would be in the best interest of the child. See Iowa Code § 600A.10 (1987), repealed by 87 Acts, ch. 159, § 10. Upon reviewing the record in this case, we conclude that it would be in L.C.'s best interests for some visitation rights be granted to the petitioners. The trial court expressed concern that it would disrupt adoption possibilities and disrupt L.C.'s relationship with future adoptive parents if the petitioners were allowed visitation of L.C. The trial court was also worried that L.C. would be exposed to contact with his natural parents if the petitioners had visitation rights. While these concerns have merit, we believe that the benefits to L.C. of visitation with the petitioners outweigh the negative factors. L.C. has established a close relationship with the petitioners. He has expressed a desire to visit his grandparents. A denial of access to the petitioners would sever an important familial bond. The petitioners have always cooperated with the Department of Human Services and they have indicated that they would continue to abide by any conditions imposed upon the visits with L.C., including the requirement of no contact between L.C. and his natural parents. Although there was testimony that as many as half of the potential adoptive parents would drop out of consideration if visitation were to continue, half would remain in consideration. We agree with the petitioners' argument that, since no final adoptive placement for L.C. has been found, any opinions about potential disruption or opposition by prospective parents

is speculative. We therefore order that the petitioners should be granted visitation rights as follows:

1 Visitation shall be supervised by the Department of Human Services.

2 There shall be no overnight visits.

3 Visits shall not occur in the petitioners' home, but rather shall be at a neutral site.

4 Visits shall occur no more than every four weeks and shall last no more than three hours.

5 No contact of any kind will be allowed between L.C. and his natural parents during the visits.

6 After L.C. has been placed for adoption with new parents, visitation rights shall be reduced to written and telephone communications, with the issue of further personal contact to be decided by the new parents.

We now turn to the issue of visitation with A.C. Again, the applicable standard is what is in A.C.'s best interest. See Iowa Code § 600A.10 (1987), repealed by 87 Acts, ch. 159, § 10. Having reviewed the record, we believe that it is not in A.C.'s best interest to grant the petitioners visitation rights. The evidence reveals that A.C. is still sexually attracted to his grandmother. A.C.'s psychiatrist testified that if visitation occurred, there would be deterioration in A.C.'s current functioning and behavioral progress. For these reasons, we affirm the trial court's denial of the petitioners' application for grandparent visitation.

AFFIRMED AS MODIFIED.

Hayden, J., concurs; Donielson, P.J., dissents.

DONIELSON, P J. (dissenting)

I respectfully dissent I would affirm the trial court's findings that it would also not be in L C 's best interests to have visitation rights with petitioners for those reasons set forth by the trial court In addition, I find that L.C. should not be exposed to the risk of being subjected to the same pattern of sexual abuse from which A C has suffered While I recognize that this constitutes some speculation, I cannot ignore the fact that A C has psychological scarring and behavioral problems as a result of the sexual abuse incurred from petitioners' daughter I am particularly influenced by the trial court's ability to see and hear the witnesses concerning this very sensitive area The fact that one child can see the grandparents and the other cannot appears to be impractical and in the long term unworkable