IN THE COURT OF APPEALS OF IOWA

No. 0-540 / 90-531

IN THE INTEREST OF D.L.H., JR., AND H.L.H., Children, D.L.H., SR., Father, and D.J.H., Mother,

Appellants.

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Appeal from the Iowa District Court for Polk County, Michael Streit, Judge.

Appellants challenge a trial court order terminating their parental rights. **AFFIRMED.**

Michael P. Holzworth, Des Moines, for appellant father.

Brett J. Long, Des Moines, for appellant mother.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

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

HAYDEN, J.

The parents in this termination proceeding were married November 5, 1984. At the time the father, D.H. Sr., was eighteen years old. The mother, B.J.H., was sixteen years old. They have since filed for divorce. The divorce action was pending at the time of this termination proceeding.

Two young children are involved in this termination proceeding. The little girl, H.H., was born in July 1985. The little boy, D.H. Jr., was born in January 1987.

D.H. Jr. was taken to the hospital on July 19, 1987, apparently by a baby-sitter with whom the children had been left for a week or two. D.H. Jr. remained hospitalized until July 24, 1987. He was diagnosed with mild dehydration, acute gastritis, possible pneumonia, and maternal deprivation. The family was residing in an automobile at the time of the hospitalization.

The parents visited D.H. Jr. twice during the hospital stay. According to a doctor, the maternal deprivation resulted from insufficient time spent by the mother with the young child. Thus, the necessary mother-child bonds could not form.

The parents were to bring D.H. Jr. back for a follow-up visit July 29. However, they once again left the children with the baby-sitter. Apparently the parents did not contact the baby-sitter prior to the medical appointment. Therefore, the baby-sitter took the baby boy to the appointment.

The children's baby-sitter contacted the Department of Human Services (DHS) on July 31, 1987. The baby-sitter indicated she could no longer care for the children and did not know how to contact the parents. They had been in the exclusive care of the baby-sitter at least two or three weeks, not including D.H. Jr.'s stay in the hospital, before their removal by the DHS.

The children were placed in foster care. A denial of critical care report was founded August 5, 1987. The children were adjudicated children in need of assistance (CHINA) on August 24, 1987.

The children were placed in a second foster home in December 1987. They were subsequently removed from this home around January 30, 1988. This removal apparently occurred following a founded sexual abuse report on the foster father against another child not concerned in this case. The DHS investigated the child's sexual acting out. A founded sexual abuse report was filed with perpetrator unknown.

On August 10, 1988, another foster parent contacted DHS by telephone concerning apparent increasing sexual acting out by H.H. The foster mother memorialized this telephone conversation in a letter to the DHS worker involved. On October 4, 1988, a founded sexual abuse report was filed, naming the father as perpetrator.

Extensive services were offered to both the mother and the father. They attended the Parent Infant Nurturing

Center Program (PINC). In fact, they were offered a second chance to take the PINC program after they initially refused to follow up. The father completed the PINC program. The mother did not.

DHS arranged numerous supervised visitations. The parents were offered training at the Parent Growth Program. They were provided with a drug and alcohol evaluation. Both parents were provided with ongoing individual counseling scheduled at regular intervals. They attended about half their scheduled individual counseling sessions.

The parents were provided with Protective Homemakers services. A foster care specialist worked on their case. They also had individual DHS caseworkers on a continuous basis with whom they met for advice and evaluation.

After extensive efforts with the parents, it was determined the children could not be returned to the parents. A petition to terminate parental rights was filed. After an extensive hearing, the trial court terminated the parental rights of both parents. Both the mother and the father have appealed.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

In our analysis, we deal with each of the parents in turn. This is necessary, as the termination of their parental rights is supported by clear and convincing evidence on separate and distinct grounds.

I. The Mother

After extensive services, the DHS found the mother to be non-cooperative. She stated to a DHS worker "the only reason I'm here right now is because I don't want [the DHS worker] bitching about having to do it anymore." The mother has problems finding a stable residence and stable employment.

A portion of the report prepared by the Iowa Court Appointed Special Advocate summarizes the situation regarding the mother at the time of the termination hearing:

> On May 9, 1989 [the parents] separated and subsequently [the mother] did not participate in the PINC program, did not maintain her counseling sessions, has not maintained employment or a stable residence, and did not visit her children or make any effort to contact them or any workers on this case for almost six months.
>
> Since [the mother] began visitations with [the children] again in November, [the] DHS Foster Care Specialist reported to me that because [the mother's] visits with the kids were having such an adverse effect on the kids, that she was cutting back her visits to every other week. [The DHS Foster Care Specialist] reported that the children at first didn't remember who [the mother] was and didn't believe her when she told them she was their mother. The foster mother reported that [the children] were reacting at home after their visits with [the mother] by violent, aggressive behavior in which they would pretend they were [the parents] who would play violently with their "babies", the dolls. The foster mother also reported that [the girl H.H.] continues to act out sexually at home, with other children, and at church when she comes in contact with other men.

(Emphasis in original.)

The mother has been continuously uncooperative. Most importantly, the mother disappeared for six months at a critical time in these children's development. She did not inform DHS of her whereabouts.

This behavior is reminiscent of her behavior some two years earlier of going off and leaving the children with a baby-sitter with no way to contact her and no word of her whereabouts. We believe this type of behavior, after two years of extensive DHS intervention and services, shows little or no change. Certainly it does not demonstrate the mother has a strong, sincere desire to regain care of her children. Indeed, it demonstrates the opposite. This

mother is not fit to take over the responsibility and chores of parenting after exhibiting such irresponsible and immature behavior.

The best interests of the children are paramount. They cannot be forced to wait indefinitely for the mother to grow up. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

We affirm the trial court on the termination of the mother's parental rights.

II. The Father

The major and abiding problem with the father is the allegation of sexual abuse. This, however, is not the only concern.

A. Father's Present Girl Friend

At time of the termination hearing, the father was residing with a woman who was being investigated by DHS for neglect and denial of critical care for her own children. See State's Exhibit 9. H.H. and D.H. Jr. were having severe problems in their relationship with this woman and her children.

The father was repeatedly warned by DHS his residing with this woman would injure his chances of regaining custody. DHS did not regard the woman as fit to take over parenting of the two children. The record supports this conclusion. The father refused to change his residence, although he attempted to clean the filth from the place.

There is also strong evidence in the record much of the father's compliance with DHS requirements was due to his attempt to "please" or con the social workers. One report describes his role-playing as "slick."

> [The father] did participate and give some superficial responses to issues dealing with the protection of the children, but he could not expand on the ideas presented. [Both therapists] got the impression that [the father] was parroting what they wanted him to say. He appeared to sit back, listen for what he thought they would like to hear, and then feed this back to them. By doing this he very effectively did not engage with [the therapists]. The two therapists also saw [the father] as having a "slickness" about him, where he could behave himself for the two months that he was required to be here.

Father's Exhibit C.

Some of the reports on the father do indicate progress. However, after a thorough review of the record, we have the firm conviction the quoted portion of the report is accurate as to the father's motivation and character.

B. Sexual Abuse

We turn now to the issue we find by far the most distressing. This is the issue of founded sexual abuse by the father upon the young daughter.

The record shows the first report of possible sexual abuse was made January 5, 1988. This initial report was by the then foster mother. The initial report appears to be virtually identical to numerous and increasing sexual acting out behaviors of the little girl.

Apparently a report of sexual abuse was founded against the foster father with another child not involved in this case. H.H. and D.H. Jr. were removed from that foster home at the end of January 1988. They had been at that foster home for only a month and a half. A review of the record does not indicate the sexual abuse on H.H. was perpetrated by this foster father. The reasons for the trial court's and our conclusion in this matter are explained below.

1. Credibility of Witnesses

The record shows repeated and continuous references by H.H. to her father as the perpetrator of the sexual abuse. This observation is supported by the reports of several social workers, therapists, foster parents, and clinical psychologists. Several of these individuals testified at the hearing.

One of the main witnesses for the State was Dr. Barbara Cavallin, a well known and highly regarded clinical psychologist with broad experience in child abuse cases. Her credentials show she obtained her Ph.D. in clinical psychology at the University of Kansas in Lawrence, Kansas. She did her clinical internship at Topeka State in Topeka, Kansas. She worked at the children's division of the Topeka State Hospital. She did her post doctorate at Menninger Foundation in Topeka. She went into private practice in Des Moines in 1978. As a clinical psychologist, she specializes in children and families.

She has worked with several hundred child sexual abuse victims over the past twelve years.

At the hearing Dr. Cavallin testified she had been working with H.H. continuously over a year and one-half period. The trial court gave credence to her testimony and so do we in our de novo review of the entire proceedings. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

2. Reports of Abuse

The father argues the record shows a warm and affectionate bonding between the father and H.H. Our review of the record revealed some shocking details concerning this alleged bonding.

There are repeated statements by H.H. to various persons to the effect of: "Daddy [D.H. Sr.] suck my pee pee." When playing with anatomically correct dolls, she would compulsively suck on the male's penis. In fact, the record demonstrates H.H. actually wanted to suck the male penis. We refer to a pertinent portion of Dr. Cavallin's report, dated January 18, 1989, as follows:

> I asked what about your daddy [D.H. Sr.] and she said "He sucks my pee pee, he sucks my pee pee." I asked what does that feel like and she said "It hurts my pee pee."...She then took the diaper off the doll and I asked what does he do and she said "Sucks my pee pee right here." Pointing to the genitals of the doll. She then went on to say "And he sucks my belly button." I said where else

> does he suck and she said, "Here" pointing between her own legs....
>
> By this time she had gotten out the anatomical baby boy doll and taken the diaper off of this. She kept saying "See his pee pee you suck on it like this." She then began to demonstrate. She then put the doll's face next to her ear and asked it "I suck you pee pee?" She then turned to me and said "He said it okay, he want me to suck his pee pee." I asked why do you want to do that and she said "He said it okay, he want me suck his pee pee." I asked why do you want to do that and she said, "Cuz he like me and I like him." She then became obsessed with sucking on the doll's penis and kept it in her mouth most of the time. She would look up at me several times and then said, "I go under table and suck his pee pee." I said why and she said, "Cuz I like to I suck his butt butt." I said who did that, and she said "Momma [B.J.H.] do." She continued to suck on the penis of the doll and I had to put the diaper on to get her to stop.
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> I asked don't you think that would hurt the doll and she said, "No, him like that, make it feel better." I tried to get her to tell me who told her that, but she would not say.

The record is replete with similar strong references almost identical to the above report. The child has been consistent over a long period of time in pointing out her father as the perpetrator.

The record shows clear and convincing evidence the father perpetrated sexual abuse on H.H. A founded report of sexual abuse by the father on H.H. was filed October 4, 1988. Several professionals, including Dr. Cavallin and art therapist Tracy McLachlan, filed reports showing H.H.'s referring consistently over a long period to sexual abuse by her father. At least two different foster mothers reported sexual acting out by H.H. consistent with the

behavior described by Dr. Cavallin in her testimony and reports.

The sexual acting out is ingrained in H.H., and she does not see it as abnormal. This supports the conclusion put forth by Dr. Cavallin and adopted by the trial court the sexual abuse was done when H.H. was very young and continued for a long time. To obtain a clear perspective on the trial court's findings, we set forth a portion of Dr. Cavallin's testimony.

> Q. Are there still incidents of sexual acting out on her part? A. There still are, yes. She attempted to perpetrate on a little boy apparently in the preschool and also one in Sunday school and continued to try and perpetrate on her younger brother.
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> Q. The fact that that still continues to happen occasionally, does that indicate anything to you. A. It does.
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> Q. What would that be? A. It indicates that this is quite ingrained in her nature by now, that the abuse started so early that she sees this as a normal part of behavior, and thus, it's going to be a very difficult habit to break and a very difficult piece of behavior to stop.
>
> Q. Because [H.H.] has named her father as a perpetrator and because she's still having problems like this, would returning her to her father, would that possibly help the situations?
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> * * *
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> A. I would need to know what kind of treatment had taken place in the interim period. However, if the individual who perpetrated had not admitted to doing the abuse and had not sought treatment actively for that, he and the child are both at risk for the abuse to take place again. [The father has refused to admit any sexual abuse.]
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> * * *

Q. The other thing I'd like to cover with you, Dr. Cavallin, is State's Exhibit No. 6, your April 12, 1989, report, and down there in the diagnostic formulation you believe that this behavior of [H.H.'s] is so pervasive and obsessive that it could not have come from brief stays at a baby-sitter's, correct?

A. Yes.

Q. How about extensive stays at a foster home, did it come from that?

A. Well, could I answer that?

Q. Well, first maybe we better define what do you mean by the term "brief", a ten day stay, four hours, a weekend or even a month or so?

A. Those or a month or so would probably not create the kind of evasiveness. That was one of the things that I had to differentiate if an abusive situation takes place later in a child's life, and is like a one or two time situation, it becomes what we call ego-alien. In other words, it becomes a foreign experience to them, and it may act out slightly but tend to see it as not normal behavior for them. What I'm referring to here is that this seemed to have taken place so early in [H.H.'s] life that she sees that as a normal part of parent/child interaction which means that it has to have gone on for a fairly long period of time, and has to have gone on fairly early since it's just so natural for her to behave this way, that she can't understand why other people object to it, so if it were a one or two time thing or if it had taken place in an alien place like a foster home or a baby-sitter, she would have been able to reject that as part of her behavior.

Q. But within the child in that age group who has primarily lived most of her life in foster homes, wouldn't she identify that as like her familiar environment or natural surroundings?

A. Well--

Q. Because it doesn't appear to me that she would be able to relate to her natural parents' home if she was removed at approximately two years of age or younger, and then the rest of the time she was in these foster homes, and some of them for a relatively long period of time.

A. Well, you need, if I can answer the question from the developmental standpoint, you have to understand what a child of two to two and a half would be doing, and that's when they're going through the terrible twos. They are literally pulling away from family to a certain extent. They're fighting family and getting closer to them to a certain extent. They do like

> nurturing and that kind of thing but they're going through that rebellious period, so one would expect if it had taken place anywhere after the age of two to two and a half to three, then, she would be rejecting the behaviors because it would be an adult doing something to her when you know two-year olds don't even like you dressing them. Other than something real intimate, she would be rejecting and angry about it. If it took place before the age of two, she would have accepted all kinds of nurturing. It would have become an internal part of her view of a parent/child relationship, and that seems what has happened. So looking at developmentally where the child would be at in the terms of relationships to not only its natural family but foster family, there you have it.

H.H. apparently continued the sexual interaction to gain the love and approval of an adult she needed in her very tender years. "Him like it" and "It makes him feel good" when "Daddy [D.H. Sr.] sucks my pee pee" or "I suck him pee pee". Despite what the father may feel, we do not believe this is appropriate "warm and affectionate bonding" for a three and one-half-year-old child.

H.H. has exhibited severe behavior problems over a long period of time. These include inappropriate sexual acting out with other young children. The depth of sexual knowledge and the fixation on the incestuous relationship support the conclusion the father was the only one in a position to have carried out the sexual abuse.

We do not rely on the video tape testimony presented in this case in making our decision. Dr. Cavallin also viewed parts of the same video and disapproved of its technique. Following is a pertinent portion of her testimony:

> Q. Is it possible that the type of art therapy session that you viewed earlier in your testimony could have contaminated the progress you were trying to make?
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> A. Well, my dilemma there is I only saw a brief amount of the tape and I saw it out of context. I can't imagine the therapist bringing with the dolls sitting and bringing it [sexual abuse] up with no play allowed. You usually build up to bringing those dolls out, so I don't know the context of that....

Because we find the testimony of Dr. Cavallin to be reliable, as did the trial court, we likewise note her professional objections to the video tape.

One final point needs to be made. Not until Dr. Cavallin had been seeing the child for five or six months did the child begin to talk of her sexual experiences. However, Dr. Cavallin testified she purposefully works on making the child feel at ease before attempting to explore the traumatic issues buried within the child's mind and heart. The psychologist's basic job is to heal the child, not investigate purported sexual abuse. Also, the young child's verbal skills were very primitive and developed gradually over the period of H.H.'s relationship with Dr. Cavallin.

3. **Corroborating Evidence**

The dissent claims there is not enough evidence in the record to terminate the father's parental rights. The dissent wishes to remand this case for additional evidence. Our review of the record and voluminous appendix convinces us there is no need for more delay. The record is replete with evidence supporting termination.

There is an abundance of other evidence corroborating Dr. Cavallin's testimony. The first piece of evidence solidly on point is a letter from the third foster mother to the DHS investigator dated August 14, 1988. The letter memorialized a telephone conversation between the foster mother and the investigator on August 11, 1988. The conversation occurred the day after a visit by H.H. with her natural father. We quote from the letter in pertinent part:

> [H.H.] had gone to the bathroom two times and the tabs on her diaper were not holding. I was changing her as soon as we got home. She said "Suck it". I wanted to be sure of what she was saying, so I asked her "What?". She repeated "Suck it". I said "Suck what [H.H.]?" She said "Suck my pee pee." I said "Why would I want to do that [H.H.]?" She said "My daddie do it." I said "Daddie who?" She said "My daddie [D.H. Sr.] suck my pee pee". I said "Daddie [D.H. Sr.] does what?" I wanted to be very sure of what she was saying and I wanted her to tell me. She repeated "Daddie [D.H. Sr.] suck my pee pee". I said "Where?" She sucked up her lips and said "suck it" and touched her pee pee. Then she said "You do it." I said "No, [H.H.]. That is naughty. No one should suck your pee pee." She said "My daddie do it". I said "Well, your daddie is naughty. He should not do that. Do you understand?" [H.H.] said "Yes." and then started talking about her favorite song at school. Nothing else was said about the incident.
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> I hope this is helpful. I wrote the note right after it happened, so I believe it to be close to accurate, word for word. [H.H.] has also asked me to "Suck my poo pee hole" while pulsating her vaginal area. . . .

There is a founded child sexual abuse report in the record. The reports states H.H. "was now telling her therapist [art therapist Tracy McLachlan], investigator

Patty Burke and also her foster mother [ ] that he had touched her sexually." The report named the natural father, D.L.H., Sr., as perpetetrator. A previous founded sexual abuse report, with perpetrator unknown, had already been filed.

H.H. was also seen by Tracy McLachlan, a counselor specializing in art therapy. We set out applicable portions of her reports:

> During my therapy session with [H.H.] October 25, 1988, she disclosed more information about the sexual abuse by her natural father, [D.H. Sr.].
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> I asked [H.H.] to paint a picture of what happened with her and the dad she used to live with. Her verbal response includes the following:
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> "...My dad, [D.H. Sr.] suck my peachie. .... He hurt my peachie." I asked her, "What is your peachie? Can you point to it?" She pointed to her genital area and stated, "Right here." I asked what else did he do? [H.H.] responded, "He hurt his finger, by my peachie. Fingernails in my peachie." I asked how that felt, and she replied that it hurt.

A second report continues:

> I have seen [H.H.] for nine art therapy sessions starting October 11, 1988. In our sessions she has consistently named Daddy [D.H. Sr.] as a perpetrator of sexual abuse. She has confronted the abuse in four sessions in doll play, drawings and verbal responses.
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> At this point in time, [H.H.] has told of the abuse by Daddy [D.H. Sr.] several times. Yet she continues to have supervised visits, despite a founded CPI report. For therapeutic goals to be realized, [H.H.] must feel emotionally secure. I feel that in [H.H.'s] best interest, the visits with [D.H. Sr.] should be stopped and a no-contact order should be issued. Even in a supervised visit, the threat of reabuse is present. The child is revictimized by the triggering of memories of past abuse. Despite the child seeming

> to accept the visits, I believe her process of dealing with the incest in therapy sessions has been jeopardized. Her recent work shows fear and anxiety. She continues to have nightmares, occasional incidents of wetting her pants, and an inappropriate response to stress. She must feel emotionally and physically safe and continue in therapy to work through the sexual abuse issue.
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> * * *
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> We live in a society that places little value on the credibility of children. Parental rights frequently take precedence over children's rights. In this particular case, I believe [H.H.] is getting the message that her rights and needs are secondary. The attitudes she is developing about herself are most potent in this birth-to-four years developmental stage. [H.H.] must be helped to feel valued, safe, listened to and respected.

We note the first person to report signs of sexual acting out by H.H. was the second foster mother around January 5, 1988. We note this is the same home where the foster father was found to have sexually abused an adoptive daughter. However, no sexual abuse by the foster father on H.H. was ever founded.

We further note the depth and prevalence of sexual acting out by H.H. refutes the dissent's theory the foster father was the perpetrator. H.H. accepts the sexual acting out as normal. She appears to expect the participation in the sexual acts, to the point of acting them out on others. We find it beyond credulity this depth of sexual activity could have been ingrained into her psyche in two weeks time. H.H. and her little brother had just moved in with this particular foster family on December 17, 1987.

At that time she was a frightened two-year-old being pushed and shoved from one new environment to another, out of contact with familiar surroundings and persons. If the sexual abuse in question had indeed been perpetrated by this total stranger, a big and foreign giant in this little child's eyes, her reaction would have been far more traumatic and freaked out. The evidence militates against a finding of sexual abuse of the type apparent here by the foster father.

A social worker who finally recommended termination worked with the parents for several months before making the recommendation. She stated in her report:

> The sexual abuse issue of [H.H.] is an overriding concern. [The mother] and [the father] have not acknowledged the fact that [H.H.] has been sexually abused. They hae [sic] stated that they feel Heather wasn't sexually abused, but that she may have observed sexual behavior in a foster home or in a past baby sitter's care. With this attitude, it is a concern that [the mother] and [the father] may not follow through with the therapy [H.H.] needs in order for her to work through the sexual abuse.

Another social worker who also worked with the parents for several months also recommended termination. She reported "The children's behaviors have went downhill in correspondence with the visits (with the natural father). [H.H.] is getting very aggressive and wanders around in a confused state most of the time. ... [D.H. Jr.] has also shown anxiety in the form of crying a lot for no reason and

not being able to sleep at night. They are also increasingly agitated and unhappy and grouchey [sic] during visit times."

Further, the Iowa Court Appointed Special Advocate Program volunteer (CASA) also recommended termination. She investigated the case and visited the father, who was living with his girlfriend at the time.

Additionally, we note we are merely reciting the evidence from a report stating the father tries too hard to do and say the right thing, apparently to please others. Further, the certificate the father obtained in the parent growth program appears to be a generic certificate issued to those who pass the minimum requirements of the program. The record does not appear to contain any qualitative survey of his actual performance in the program.

While Dr. Cavallin, being a practicing clinical child psychologist, provided the most expert testimony on the type and depth of sexual abuse, these others firmly and independently corroborate her testimony. We rely upon the cumulation of all these in reaching our decision. In fact, it was the letter from the foster mother and the subsequent founded child sexual abuse report which initially alerted us to the deeply disturbing circumstance of this case. This child was seriously sexually traumatized at a very young age. It will take years for her to recover from the effects of this heinous abuse. She will probably bear the scars of the abuse for the rest of her life.

III. Conclusion

The trial judge was present and was able to observe the witnesses first-hand. He was best able to weigh their credibility in light of his experience. We determine he ruled correctly after carefully considering the evidence presented.

We hold the evidence presented by the State meets the clear and convincing standard required. We affirm the trial court on all issues.

AFFIRMED.

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

SACKETT, J. (dissenting)

I dissent. I would remand the case for further evidence.

I agree with the majority's concern about further delay. I recognize we have been presented with a voluminous record, and I know we have all spent many hours reviewing the evidence. I am, however, unable to share the majority's certainty that the natural father sexually abused the female child H.H. A good deal of my concern centers around the father's contention the abuse occurred in foster care, and his argument both the State and Dr. Cavallin have conflicts on this issue.

The children were not represented on appeal. The State did not address these possible conflicts. I feel I would be remiss in deciding this case without an independent investigation on this issue, and I would remand for that purpose.

The father argues the sexual abuse occurred while the child was in the State's care in her second foster home. While this child was there, her foster father sexually abused another female child. The natural father argues Dr. Cavallin has a conflicting position because the second foster father is a patient of Cavallin's and this may have affected her objectivity where there was a need to identify the sexual abuser of this child.

Furthermore, there is evidence that gives me serious suspicion the sexual abuse may well have occurred in the second foster home, namely:

1. H.H. was born in July 1985. She was only two years old when she was placed in foster care in July 1987. There was no evidence of sexual abuse noted when she was removed. Other than visitation, she has had no contact with her natural father after her second birthday.

2. H.H. lived in a first foster home until December 17, 1987. There is no evidence while in the first foster home that H.H. exhibited any signs of having been sexually abused. She made a good adjustment in that foster home.

3. H.H. went to the second foster home on December 17, 1987, and was there until January 30, 1988. During the time the child was in this home, it was determined H.H.'s foster father had sexually abused another female child. In February 1988 H.H. was moved to a third foster home.

While with the third foster family, H.H. exhibited signs of having been sexually abused. She told her natural mother her third foster father had abused her. She told her foster mother several persons had sexually abused her, including her natural father and her current foster father. At this point, H.H. was a little more than two and one-half years old. Only five or six months later was the natural father allegedly identified as the abuser by Dr. Cavallin, who claims to have learned the identify from statements made by the child.

4. The foster mothers who noted signs of sexual abuse were the second, third and fourth foster mothers. The first foster mother reported the child made a good adjustment in her home. She reported nothing that would suggest the child had been sexually abused prior to being placed in her care.

5. The child has now been in four foster homes. She identifies her foster parents and her natural parents the same way - for example, Daddy, and then the parents' first name. At all times she has exhibited considerable confusion between her natural and various foster parents. Reports indicate in the spring of 1989 this child did not even know her natural mother.

The majority put considerable reliance on Dr. Cavallin's testimony. They do not rely on a video tape of an interview by an art therapist with the child on November 11, 1989, because Dr. Cavallin found the art therapist's interview techniques inappropriate. I viewed the tape of the art therapist interview. It was instructive to me. I noted during the interview, the child was encouraged to use dolls to demonstrate behavior. The child, with some coaching through the use of dolls, illustrated inappropriate sexual behavior, including the sucking of the doll's penis. When asked about the perpetrator, the child initially identified a foster father, several mothers, and her natural father. She most often identified the mommie, although the behavior frequently attributed to the -- mommie sucking a penis -- raises serious concerns in my mind about the credibility of any of the child's statements.

My conclusion after watching the tape was the child was young and immature. She was not a reliable reporter, did not make credible statements and was very susceptible to suggestions.

I am not able to put the majority's credence in Dr. Cavallin's opinion. The child was less than three years old when she talked to Dr. Cavallin about events that happened before she was two. The statement from the child came only after extensive questioning by Cavallin.

These children were taken from their parents because they were left too long with a caretaker. At the time, the parents were homeless. They were living in their car. Poverty was not an excuse for the parents' actions, but poverty made it much more difficult for these parents to care for their children.

Since the removal, the father has become employed. He has adequate housing for the children. He has cooperated with the department in visitation, attending counseling and classes. I note in the parent growth program through the Des Moines Public Schools that he obtained a certificate of highest honors for what was shown as "determination in difficult situations," "courage to explore new opportunity," and "willingness to share and learn."

The State's argument as to why the children cannot be returned to the father is:

> The homemaker reports indicate, sexual abuse issue aside, D.H., Sr. could parent the children effectively if alone. However, D.H., Sr.'s "laid-back" attitude indicated to many of the professionals he would rely on his girlfriend to watch the children and that neither one had the ability to deal with H.H.'s behaviors, especially with the other children present.
>
> Dr. Cavallin felt that return of H.H. to her father's home, without sexual abuse therapy having occurred, would be emotionally damaging to H.H. D.H., Sr. saw no need to make child care arrangements, other than his girlfriend, if the children were returned.

The father's alleged sexual abuse is his stumbling block.

It is unfortunate the foster father was a sexual abuser, but when this came to light, an investigation by an independent agency should have been ordered. These problems in foster homes should be investigated thoroughly and fairly by persons other than those who approved the foster parents. Such a procedure is necessary to both identify problems and exonerate those who are unjustly accused of abuses.

The conclusions of Cavallin should be reviewed by a psychologist free from possible conflict.

I would remand this case for additional evidence.