FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF M.L.H.,
A Child,

J.K., Natural Mother,

Appellant.

Filed December 27, 1983

3-403
83-787

Appeal from Webster District Court - Mark S. Cady, Judge.

The natural mother appeals from juvenile court's ruling upon a review hearing that foster care of her 10-year-old daughter be continued. AFFIRMED.

Blake Parker, Fort Dodge, Iowa, for appellant-mother.

Robert M. Sherman, Assistant Webster County Attorney, for the appellee State.

Kurt T. Pittner, Fort Dodge, Iowa, for the child.

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

HAYDEN, J.

The child in question, a girl born in 1973, was adjudicated to be a child in need of assistance. Her legal custody was given to the department of social services for placement in foster care.

The natural mother subsequently filed an application asking that the dispositional order calling for foster care be reviewed, and asking that the child be returned to the mother's home. In support of this application the mother asserted that she is seeking a dissolution of her marriage to the girl's stepfather, who had sexually abused the girl; the mother asserted further that the stepfather is no longer in her home and is not in a position to have any further contact with the girl.

After a hearing, the juvenile court filed a ruling reviewing the earlier dispositional order. The juvenile court concluded that placement in foster care was still warranted. The court noted evidence that the girl has shown good behavior and academic progress while in foster care but has regressed behaviorally and academically while placed with her mother on a trial basis. The court also noted the mother's mental retardation and stated that the mother "has good intentions but is simply unable to carry through with them at this time." The court directed that the child remain in foster care and that the department of social services provide assistance to the mother and child in an effort to prepare for their eventual reunion.

The mother has appealed from the juvenile court order described above. She contends the evidence does not support the juvenile court's conclusion that she cannot meet the child's needs at this time. She also contends the juvenile court violated its statutory mandate to leave the child in the parental home if possible and to seek the "least restrictive disposition" consistent with the child's welfare. Finally, the mother argues that the juvenile court's reliance on her mental retardation impermissibly imposed on her the burden to prove her fitness as a custodial parent. We affirm.

I. Scope of Review. Appellate review of CHINA proceedings is de novo. Iowa R. App. P. 4; In Interest of Welcher, 243 N.W.2d 841, 843 (Iowa 1976). We accord weight to the findings of the juvenile court, particularly where the credibility of witnesses is at issue; however, we are not bound by these findings. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

Proceedings pursuant to a CHINA adjudication are not penal in nature, and this is reflected in the standard of proof required of the State. Allegations supporting a CHINA adjudication need not be proven beyond a reasonable doubt, but rather need only be proven by "clear and convincing" evidence. Iowa Code § 232.96(2). The term "clear and convincing" means the establishment of facts "by more than a preponderance of the evidence, but something less than establishing a factual situation beyond a reasonable doubt." In re Henderson, 100 N.W.2d 111, 121 (Iowa 1972). For evidence to be "clear and convincing," it is merely necessary that there be no serious or substantial doubt about the correctness of the conclusion drawn from it. See Words and Phrases, Permanent Edition, vol. 7, at 623-24.

II. The evidence clearly shows that the child was well-adjusted and progressed in school while placed in foster care.

The report from the University of Iowa Child Development Clinic dated December 6, 1982, recommended two alternatives: (1) termination of parental rights, or (2) extensive in-home related care (mother). Dr. Gerald Solomons concluded that where the second alternative could not be provided, termination of parental rights was the only alternative.

The Department of Human Services believed that the mother should be given the opportunity to prove her ability to parent the child. On this reasoning, the child was returned home for a sixty-day trial placement. The recommendation of the Department of Human Services would depend on the success or failure of the trial home placement.

The evidence presented at the review hearing showed the child's home placement was not beneficial; that her behavior had changed, and she was assaultive and disruptive; that she would not obey or complete any goals and objectives; that her progress in school had deteriorated or regressed; and that the mother lacked the ability to properly supervise and care for the child when assisted with in-home services. All three witnesses at the review hearing strongly recommended out-of-home placement, including the mother's witness, Susan Lanning Ventura.

Review by this court is **de novo** in juvenile proceedings. In Interest of Leehey, 317 N.W.2d 513, 515 (Iowa 1982); In Interest of Blackledge, 304 N.W.2d 209, 210 (Iowa 1981). The record and transcript support the findings of the juvenile court that the child thrives in foster care and struggles while in the home. We agree with the juvenile court in its findings that the request to have the child return is premature and that the child ". . . deserves an opportunity to improve herself and this has not been possible while she resides with her mother." We are cognizant that a follow-up review hearing is scheduled before the juvenile court in January, 1984.

III. In termination of parental rights cases, a mental disability may be considered as a contributing factor to the inability to perform the duties of a parent. In Interest of O'Neal, 303 N.W.2d 414, 422 (Iowa 1981); In Interest of Wardle, 207 N.W.2d 554, 562 (Iowa 1973). However, mental disability test results consisting of an I.Q. score are not sufficient reason standing alone for termination of parent-child relationships.

Here, termination of parental rights are not sought, only placement in foster care so the child can progress and develop in and out of school. The mother's I.Q. score was not the central focus at the review hearing, rather the lack of parental ability due to low mental ability which was evaluated during the trial placement and at other times.

In addition to the I.Q. score, the record clearly shows that the mother cannot supervise and care for her child. In fact, since the child's birth the mother has never been able to assume full care of the child. Initially, she had great difficulty in paying attention to child rearing practices and was not able to follow instructions. The mother has lacked control over the child and at times cannot cope with the child. The child was sexually abused by her stepfather, who is not now in the mother's home. There was no improvement in the home situation during trial placement. In addition, the school situation deteriorated immediately during home placement. The mother now supports herself with Supplemental Security Income.

We agree with the juvenile court in its findings that the mother's lack of parenting skills appears to result from a mental inability and that the mother has good intentions, ". . . but is simply unable to carry through with them at this time," which are supported by clear and convincing evidence given at the hearing and in the record on appeal before us. We hold that the burden of proof did not illegally or impermissibly shift from the State to the mother.

AFFIRMED.