

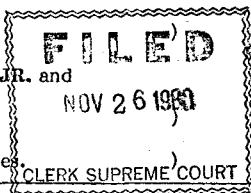
IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF

EVERETT F. LEONARD, JR. and

RICHARD MORDEN,

Juveniles.



Filed November 26, 1980

0-170
 3-64001

Appeal from Marshall Juvenile Court - Carl D. Baker, Magistrate.

Mother appeals from order placing custody of her two children with the Department of Social Services as children in need of assistance. - AFFIRMED IN PART, REVERSED IN PART.

William L. Springer, Marshalltown, for natural mother and for appellant.

Thomas J. Miller, Attorney General of Iowa, Candy Morgan Assistant Attorney General, and John G. Black, Special Assistant Attorney General, for appellee.

McCauley Carter, Jr., Marshalltown, guardian ad litem.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

OXBERGER, C.J.

This is an appeal from the trial court's order finding Everett Leonard, Jr. and Richard Morden to be children in need of assistance. The juvenile court transferred their custody to the Marshall County Department of Social Services for placement in foster care. The children's mother, Diane F. Moore, appeals.

The petition was filed by the Marshall County Attorney on February 16, 1979. After three evidentiary hearings the court entered its ruling on July 16, 1979, after new juvenile justice laws became effective on July 1, 1979. However, the case proceeded according to and the court correctly applied the law in effect prior to July 1st, namely chapter 232, The Code 1977. See § 31, chapter 56, Laws of the 68th G.A. 1979 Session.

The trial court found the children in need of assistance under section 232.2(13) 1977 Code. Our review is de novo. While we give the findings of the lower court substantial weight, we are not bound by them. In re DeRoche, 187 N.W.2d 730 (Iowa 1971). We apply a standard of clear and convincing evidence. In re Augustus, 158 N.W.2d 625 (Iowa 1968).

A temporary order providing for immediate custody of the children to the Department of Social Services was issued following a 96 hour investigation by the department. This investigation was precipitated when the non-custodial father of one of the children lodged a complaint. He complained of deplorable, unclean conditions of the children and their living quarters. The social worker on the case recommended removal of the children from the mother's care on the grounds of neglect.

At the time of the complaint, Diane and the children were sharing a two-bedroom portion of a house with three male acquaintances. The social worker testified he found the living quarters to be relatively clean, but littered. He viewed the household as "highly suspect." He observed the children to be clean, healthy and showing no signs of physical abuse. The testimony of Diane and another social worker familiar with Diane's situation indicated this living arrangement was temporary. Diane no longer lives there.

In the order affirming removal of custody, the trial court placed emphasis on the testimony of the principal at the older child's school. He saw improvement in this child's behavior and skills after being placed in the foster home setting. However, there is evidence the child was placed in a special reading program during this time. The

social worker who had counseled Diane over the previous few months testified Diane, when told of her son's problems in school, was cooperative in solving those problems.

Witnesses for Diane who had known the family over the past few years testified to Diane's care and concern for the children and her ability to provide proper parental care.

Diane has been receiving counseling in money management and parental skills. Her progress in these areas began slowly, but she is exhibiting determination to improve her abilities. Diane is trained as a nursing assistant and has secured employment as such.

We find the evidence supports the trial court's finding these children in need of assistance under section 232.2(13)(g), The Code 1977. However, we do not find the evidence supports removal from the mother. We find Diane capable of providing for her children with the continued resources and counselling available to her. Therefore, we reverse that part of the trial court's order and return the children to the custody of the mother under child in need of assistance provisions.

AFFIRMED IN PART, REVERSED IN PART.

All judges concur, except Snell and Donielson, JJ., who dissent.

SNELL, J. (dissenting)

I respectfully dissent.

The evidence shows a bad home situation. Richard, age six, was sent to school unclean, without shoes, socks, or underwear, and he had an unpleasant odor. He missed a month of kindergarten and was absent 13 1/2 days from August 28 to February 8. He was tardy on an average of three out of five days per week. At school he was withdrawn, uncommunicative, and slow to learn.

Everett, age four, was frequently unclean and inadequately dressed. His scalp was crusty and he was bothered by skin problems.

The children lived with their mother who resided in an apartment sharing a kitchen with two unmarried men who occupied another apartment. The apartment was unclean, had a foul odor, and dog feces were found to be littering the premises. The kitchen sink was cluttered and full of orange slime.

An investigation of the home situation was made by the Department of Social Services on receiving a complaint from the father of Everett Leonard. He had gone to visit his son at 10:00 a.m. Sunday and had found that the mother, Diane, had not been home all night. Diane claimed that the boys were supervised by two males in their mid-twenties. A social worker stated that there had been eight or ten previous reports of neglect.

The juvenile court ordered immediate custody to be assumed by the Department of Social Services. After receiving evidence at three hearings, the juvenile court confirmed its order and directed the department to place the children in foster care.

I would affirm on the ground that the evidence supports the placing of custody and the finding that the children are in need of assistance under section 232.2(13)(g), The Code 1977.

Danielson, J., joins in this dissent.