

IN THE COURT OF APPEALS OF IOWA

No. 1-025 / 90-778

FILED

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CLERK SUPREME COURT

IN THE INTEREST OF R.A.M., JR., A Minor Child.

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D.A.E. and R.A.M., Parents,

Appellants.

Appeal from the Iowa District Court for Wright County,
Stephen E. Barbour, Juvenile Referee.

Parents of a child appeal from a juvenile court order
adjudicating the child to be a child in need of
assistance. **AFFIRMED.**

Michael E. Houser of Houser & Berkland, Belmond, for
appellant mother.

William A. Long, Eagle Grove, for appellant father.

Bonnie J. Campbell, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Kathrine S. Miller-Todd,
Assistant Attorney General; for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J.

The child in question is a boy born in December 1989. He is the child of D.A.E. and R.A.M. In January 1990, when the child was less than a month old, the State filed a petition asking that he be declared a child in need of assistance (CINA). The State relied in large part on the father's history of mental illness, bizarre behavior, and substance abuse and the fact that the mother's two older children had previously been adjudicated to be children in need of assistance, one because of physical abuse.

In March 1990 the child was adjudicated to be a child in need of assistance. The court then filed an order suspending judgment and directed that the child be left in the parents' home, subject to DHS supervision and services. Each parent has appealed from the child in need of assistance adjudication.¹

The parents challenge the sufficiency of the evidence to establish that the child is a child in need of assistance. They assert the State presented no evidence which would support the contention that they have failed to meet this child's needs or have failed to parent this child effectively. They argue further that evidence of their past failings is irrelevant to the question at hand.

The parents also contend the juvenile court erred by taking judicial notice of (1) the juvenile court files

1. Each parent is represented by separate counsel in this appeal.

concerning the mother's two older children, and (2) a civil commitment file concerning the father's mental health.

The State filed a motion to dismiss. This motion was submitted with the appeal by order of our supreme court.

I. Finality of Order. The State urges that this appeal should be dismissed, maintaining the CINA adjudication is not appealable because the trial judge issued an order suspending judgment. The State cites us to the case of In re Interest of Long, 313 N.W.2d 473 (Iowa 1981), to support its position. In Long, the issue was whether an adjudication in a CINA case is a "final" order for purposes of appeal. The supreme court held that it was not.

We, likewise, in the case of In Interest of A.W., 464 N.W.2d 475 (Iowa App. 1990), held that an adjudication order standing alone is not appealable. But here the question is whether an order suspending judgment after an adjudication is appealable. We hold that it is. In this respect, we held in A.W. that when a dispositional order is entered it is a final order. 464 N.W.2d at 477. The following statement from Long is instructive:

Finally, an appeal may be avoided entirely by holding that only the dispositional order is a "final", appealable order. Two of the dispositions permitted by the Iowa Code following a CINA adjudication allow the judge to order that the child remain with the parent. See §§232.100-.101, The Code. If the juvenile court were to order one of those dispositions, the parents would probably have little desire or incentive to appeal.

In Interest of Long, 313 N.W.2d 473, 476 (Iowa 1981).

Based upon this statement and our reading of section 232.100, we deny the State's motion to dismiss and find that this is an appealable decision.

II. Judicial Notice of CINA Proceedings. The parents' first argument concerns the judicial notice taken by the trial judge during the course of the CINA adjudication of R.A.M. Specifically, the court took judicial notice of two prior adjudication orders involving siblings of R.A.M. Additionally, the court took judicial notice of the father's mental health file.

Iowa law provides "that ordinarily judicial notice may not be taken of court proceedings in related but wholly different cases." In Interest of Adkins, 298 N.W.2d 273, 277 (Iowa 1980). However, Adkins provided a variety of exceptions. As the parents point out, these exceptions are directed primarily towards judicial notice of CINA adjudications in a termination proceeding involving the same child. But, for the limited purpose involved in this case, we believe that such exceptions should include CINA adjudications involving other children from the same family, at least insofar as the merits of the mother's care is concerned.

To determine the best interests of the child, insight may be gained from the parents' past performance. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State asserts, and we agree, that the child in need of

assistance statutes, as well as the termination statutes, are preventative as well as remedial. Id. The courts must move to protect children from probable harm and need not delay until the harm has actually occurred. Id. The statutory provisions with regard to parental termination make it clear the legislature intended that the court take into consideration the juvenile proceedings of other children in the family. Iowa Code § 232.116(1)(f) (1989).

In addition to contesting judicial notice of the adjudication of other siblings, the parents also contend the court should not have taken judicial notice of the father's mental health file. Our supreme court has recognized that the mental illness of the parent is relevant when it poses a threat to the children. See In the Interest of A.C., 415 N.W.2d 609, 614 (Iowa 1987). Further, the father himself testified without objection to his treatment status. The information which the trial court took judicial notice of is relevant to the safety and best interest of R.A.M.

The trial court only took judicial notice of the petitions for adjudication and the adjudicative orders. Additionally, it only took notice of the father's diagnosis and continued treatment. The trial judge did not take notice of the reason behind the commitment. The trial court specifically noted the limited judicial notice he was taking, and we find that to be consistent with the

requirements provided in In the Interest of Adkins, 298 N.W.2d at 278. We affirm on this issue.

III. Sufficiency of Evidence. Appellate review of a juvenile court's finding of a child in need of assistance is de novo. In the Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interest of the child. In the Interest of D.L., 401 N.W.2d 311, 317 (Iowa App. 1986). In determining what is in the best interest of the child, the court necessarily looks at the present conditions and past performance "for that performance may be indicative of the quality of the future care that parent is capable of providing." In the Interest of Dameron, 306 N.W.2d at 745.

We must review the record to determine whether the finding of a child in need of assistance is supported by clear and convincing evidence. Iowa Code § 232.96(2) (1989). Although, on review, the court is not bound by the findings of the juvenile court, "we give weight to the juvenile court's findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses first hand" In the Interest of S.V., 395 N.W.2d 666, 668 (Iowa App. 1986).

The trial judge, in his ruling, suggested this was a very close case in which reaching a decision was very difficult. In our review we have found this to be true. However, we are in agreement with the court and find the decision to be proper. The father very clearly has some

mental health problems which could be detrimental to the child. The fact that he has been inconsistent in his treatment and that he voluntarily discontinued his counseling after he determined it to be unnecessary is of concern to this court.

We adopt as our own the following findings of the trial court:

The father's own testimony that he was under an ongoing mental health commitment weighed heavily with this Court. The father had indicated that he had been ordered to attend substance abuse counseling, but that he had voluntarily discontinued the counseling as he no longer deemed it necessary. The counseling was restarted only after a review hearing was held in the commitment matter. His testimony was admitted without objection and this opened the door for the Court to take Judicial Notice of his mental health file. Even without considering his mental health file, the answers given by the father in Court seemingly indicate that he may not participate in counseling unless there is a legal hammer hanging over his head. The mental health status of the parents must be of great concern to the Court. The Court has a duty on behalf of the child to make certain that the parents are doing all that is deemed necessary by medical experts regarding medical treatment for any underlying mental illness or substance abuse problems, yet, it must not unduly interfere unless warranted. Thousands of persons with mental health diagnosis effectively parent children. The thrust of this Order is to provide for further evaluation of the mother and father to determine if continuation of a CINA is warranted.

The trial court, in ordering a suspended judgment, pursuant to Iowa Code section 232.100, ordered the least restrictive remedy possible. This will provide minimal monitoring of the situation and will allow the parents the opportunity to make use of the family center services. We

find the trial judge to be correct in his ruling and accordingly affirm.

AFFIRMED.