IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

IN THE INTEREST OF J.G.,
A Child,

J.R., Natural Mother,

Appellant.

Filed April 20, 1988

8-50
87-773

Appeal from the Iowa District Court for Clinton County (No. 9054), John Mullen, District Associate Judge.

A mother appeals the order adjudicating her child to be in need of assistance. **REVERSED.**

Bert Watson of Clinton for appellant mother.

Robert J. McGee of Clinton for appellee father.

Stephen D. Haufe of Jurgemeyer, Frey & Haufe, guardian ad litem.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Caren Armbrust, Assistant Clinton County Attorney, for the State.

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

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OXBERGER, C.J.

This is an appeal brought by the natural mother of an order modifying an existing dispositional order in a CINA proceeding and placing J.G. with the natural father. She challenges the sufficiency of the evidence to establish that the child should have been removed from her home. She also contends the juvenile court denied her due process right to a fair trial by holding ex parte communications with witnesses, by deciding the case before hearing all the evidence, and by granting relief in excess of that sought in the husband's application. We reverse.

The child in question, J.G., was born in June 1983. At that time her natural parents, J.R. and K.G., were married. The marriage, however, was dissolved in September 1984. J.G. was placed in her mother's custody.

In June 1986 J.G. was adjudicated to be a child in need of assistance. This adjudication was based on a finding that J.G. suffered serious bruising when hit by an unidentified person while in the care of her mother and stepfather, T.R. In its dispositional order, the juvenile court directed that J.G.. continue to live with her mother, subject to the introduction of remedial services.

Since the dissolution, there has been a considerable amount of friction between J.R. and K.G. There is also considerable ill feeling between T.R., K.G., and K.G.'s mother, Y.G. There have been numerous difficulties concerning visitation schedules. In June 1986 the juvenile court, in its adjudicatory order, found K.G.'s numerous allegations of sexual abuse, drug usage, improper clothing, inconsistent cleanliness, and a change in J.G.'s behavior insufficient to support a finding that J.G. was in need of assistance. The court found these were an attempt to provide a basis for the modification of the custody provisions of the divorce decree.

In March 1987 K.G. applied for a modification of the prior dispositional order. A new or amended CINA petition was not filed pursuant to Iowa Code section 232.87. No notice of an adjudicatory hearing was given pursuant to Iowa Code section 232.88. After a hearing, the juvenile court adjudicated J.G. a child in need of assistance under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The juvenile court also found J.G. had been exposed to inappropriate sexual behavior and drug use in the mother's home. The juvenile court ordered J.G. removed from her mother's home and placed in her father's custody.

We review this appeal de novo. Iowa R. App. P. 4. We give weight to the trial court's finding of fact but are not bound by them. Iowa R. App. P. 14(f)(7).

J.R. challenges the sufficiency of the evidence to modify the dispositional order and the finding of J.G. as in need of assistance. The evidence to support a CINA adjudication must be clear and convincing. In Interest of Long, 313 N.W.2d 473, 484 (Iowa 1981). Modification of a dispositional order will be allowed upon a showing of good cause. Iowa Code § 232.103(5) (1985). We hold the evidence insufficient to support either of the juvenile court's determinations.

There were numerous allegations made in this case concerning J.G.'s possible exposure to homosexuality, cocaine use, and possible sexual abuse. These allegations are based entirely on the statements of J.G. related through K.G. and various relatives. The primary allegations are that J.G. witnessed two men engaged in a homosexual act, and that she witnessed the ingestion of cocaine through the mouth, nose, and genitalia. The juvenile court determined that J.G. had been exposed to these acts and that they subjected J.G. to emotional and psychological abuse.

We find little credible evidence in this record. We do not find J.G., as did the juvenile court, to be a credible reporter of events. She has made numerous

statements alleging sexual abuse which were shown to be untrue, recanted several of her statements, and changed the stories she related to the various counselors who interviewed her. There is little or no evidence to corroborate most of her statements. There is no evidence in the record, other than J.G.'s description of the event, to corroborate any homosexual activity. There was no evidence presented at trial, other than J.G.'s statements, to substantiate the allegations of cocaine use in J.R.'s home. The evidence is far from clear and convincing.

The juvenile court relied heavily on the testimony of Beth Holstein, a counselor hired by K.G. and his parents. Ms. Holstein was of the opinion that J.G. was not being coached and felt she was not lying. Ms. Holstein, however, did not check with J.R. regarding any of the alleged incidents. Ms. Holstein interviewed J.G. twice and received conflicting information about the incidents. She could not determine whether J.G. had been abused. In fact, Ms. Holstein stated she did not feel comfortable making a recommendation in absence of further investigation to validate some of the allegations made by J.G. as reported through her paternal grandmother.

In contrast to Ms. Holstein's testimony, the testimony of three other social workers and counselors provides little if any support to uphold J.G.'s and her relatives' statements. Two of the counselors were unable to elicit any demonstrations of sex acts, statements concerning sexual abuse, or statements concerning cocaine use. J.G. only made these allegations to Ms. Holstein. The only other consistent recountings of these events were made in the presence of her grandmother, Y.G., or through Y.G.'s relation of J.G.'s statements. The record also contains several instances of apparent influence or prompting by Y.G. Also, none of the counsellors recommended that J.G. be removed from her mother's home.

We also note that these allegations began to surface only two weeks after the court denied K.G.'s motion to expand visitation rights. There is also a substantial amount of animosity between the families involved in this matter. It appears many of these allegations are spurious and part of an ongoing battle for the custody of J.G. In light of the tremendous inconsistencies in J.G.'s statements, the minimal amount of corroborative evidence, and the context of this matter, we hold the evidence was insufficient to support the CINA adjudication, on both grounds, and the transfer of J.G. from her mother's custody to her father. We reverse the juvenile court and order J.G. to be returned to her mother.

We also take this opportunity to address the serious procedural irregularities that occurred in this case. J.R. contends the juvenile court had ex parte communications with witnesses, informed a witness of the preliminary decision prior to the close of evidence, and gave relief beyond what was requested by the father.

The juvenile court informed the parties and admitted it had ex parte communications with the witnesses. This is highly irregular, improper, and a violation of judicial ethics. See Iowa Code of Judicial Conduct, Canon 3(A)(4). We are convinced, however, this will not occur in the future. We also are not convinced a decision was made before the close of evidence. Any such conduct by the court would totally undermine the integrity of the judicial process.

Finally, while the court had broad authority to protect the interests of children, see In Interest of J.R.H., 358 N.W.2d 311, 321 (Iowa 1984), we find the juvenile court overstepped its authority in adjudicating J.G. in need of assistance in absence of a petition requesting that finding. The Iowa Legislature has created a statutory procedure to follow in handling this type of case, a juvenile court should not circumvent these procedures through its own initiative.

The judgment of the juvenile court is reversed.

REVERSED.