IN THE COURT OF APPEALS OF IOWA

No. 1-420 / 90-1509

FILED
DEC 31 1991
CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

GREGORY MARK HINTZE,

Appellant.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Hintze appeals his conviction, following a bench trial, for second-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson, Assistant Attorney General, William E. Davis, County Attorney, and James D. Hoffman, Assistant County Attorney, for appellee.

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

OXBERGER, C.J.

Gregory Hintze was accused of sexual activity with a ten year old girl. Following a bench trial, he was convicted of sexual abuse in the second degree. He has appealed.

Hintze contends the district court abused its discretion by admitting expert opinion testimony from a mental health nurse practitioner, Marsha Rexroat. Rexroat testified that certain behavioral symptoms exhibited by the child were consistent with the problems and symptoms commonly present in sexually abused children. Rexroat acknowledged on cross-examination that similar symptoms could be triggered by other events in a child's life. Hintze argues that Rexroat's testimony was irrelevant because there was no showing that sexual abuse was the only likely cause for the symptoms.

STANDARD OF REVIEW: We review a trial court's decision to admit opinion testimony, for an abuse of discretion and will reverse only if we find such abuse and prejudice. See State v. Myers, 382 N.W.2d 91, 93 (Iowa 1986). In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

EXPERT TESTIMONY: The sole issue on appeal is whether the trial court abused its discretion in admitting expert opinion testimony that symptoms exhibited by the child alleged to be abused in this case, were consistent with a child who had been sexually abused. Hintze asserts the testimony of the expert, Ms. Rexroat, regarding behavioral changes and symptoms frequently seen in sexually abused children was irrelevant. He argues that since Ms. Rexroat admitted that such symptoms could be indicative of another problem other than sexual abuse, the testimony is irrelevant. We disagree.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Iowa R.Evid. 401.

The question in this case was whether a ten year old girl had been sexually abused. The record indicates there were dramatic character changes in the girl which could be associated in time with the alleged incident. Ms. Rexroat's function was to describe for the jury the classic characteristics that a child exhibits after being sexually abused. She testified:

> Q. What kind of problems do you see as far as the victimization cycle involved in sexually abused children?
>
> A. We see a wide range of symptoms exhibited by the child. Depending on their age, we can see bed wetting, problems with bowel habits, eating

> habits, a change in behavior of any kind. Often times we see a lowering of school grades without any other explanation, acting-out behaviors, some angry, defiant kinds of behaviors that have not been seen prior to this.
> . . .
> We, in the middle-age child, often see a change in behavior at school, academically and behaviorally, socially with friends. Any change in behavior where a child has been possibly social and then becomes withdrawn, or just the reverse of that has been noted in the literature and applies to anxiety related to sexual abuse. Drop in grades is an issue that becomes very often seen in children of school age. Any kind of defiant, noncompliant behavior, which is usually explained by the inner turmoil the child has experienced due to the sexual abuse, is often seen at school and at home. In older children we see attempts of suicide, drug usage, some of that running away in some of the older teens.

We find this testimony is relevant and probative in light of the character changes present in the child alleged to have been sexually abused.

Hintze next argues that the testimony was not helpful to the court. He contends that there was nothing about her testimony which was not common understanding of the court. We disagree. We are committed to a liberal rule which allows expert opinion testimony into evidence if it will aid the jury in screening the properly admitted evidence to ascertain the truth. State v. Hall, 297 N.W.2d 80, 84 (Iowa 1980). Ms. Rexroat brought to the court the benefit of her experience and study in the field of sexual abuse. We find the testimony of Ms. Rexroat would help the court to understand characteristic patterns of sexually abused children. We find no merit to the argument that an

awareness of such patterns would be within the common knowledge of the jurors.

Hintze next asserts the testimony could have been interpreted as expressing an indirect opinion on the credibility of the victim. Ms. Rexroat testified:

> Q. Would you be able to give us an opinion, within a reasonable degree of medical and psychological certainty, regarding the consistency with a child being sexually abused as relating the symptoms that you've observed and detected in this child?
>
> A. Yes.
>
> Q. Now, without asking you as to whether or not you believe the child -- that's not what this point of inquiry is. You understand that?
>
> A. Yes.
>
> Q. What is your opinion regarding the symptoms exhibited by this child as to whether or not they are consistent with a child who has been sexually abused?
>
> A. I believe they are consistent with a child who's been sexually abused. (emphasis added)

We find this testimony did not constitute a direct or indirect opinion about the child's "truthfulness" as a witness. Ms. Rexroat's testimony describing classic characteristics of children sexually abused and her opinion that such characteristics were consistent with the child's behavior relates to the consistency of the characteristics. It did not address whether the child had been sexually abused by the defendant or whether the child was telling the truth. The testimony addressed the conduct of the child. We find the testimony of Ms. Rexroat was properly admitted and affirm the trial court.

AFFIRMED.