



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF C.M.,)
S.M., and L.M., Minor)
Children.)

J.M., Natural Father,)
)
Appellant.)

8-521
88-401

184

Appeal from the Iowa District (Juvenile) Court of Page
County (J4-35), James S. Heckerman, District Associate
Judge.

J.M., the natural father of three children, appeals a
district court order returning the children to their
natural mother. **AFFIRMED.**

Verd R. Bailey, Clarinda, for appellant father.

Mark D. Swanson of Swanson, Boeye & Bloom, Red Oak, for
appellee mother.

Gary T. Gee, Shenandoah, guardian ad litem for the
children.

Thomas J. Miller, Attorney General of Iowa, and
Kathrine S. Miller-Todd, Assistant Attorney General, for
the State.

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

SCHLEGEL, J.

185

J.M., the natural father of three children, appeals a district court order returning the children to O.M., their natural mother. He argues that the court's decision was contrary to the evidence presented and not in the best interests of the children. We affirm.

This case arises from a child-in-need-of-assistance (CINA) proceeding in juvenile court pursuant to Iowa Code section 232.2(6)(f) (1987). Appellate review of an order entered after a review hearing in a CINA proceeding is de novo. In the Interest of Blackledge, 304 N.W.2d 209, 210 (Iowa 1981). While we give weight to the juvenile court's findings of facts, we are not bound by them. Iowa R. App. P. 14(f)(7); In Interest of S.V., 395 N.W.2d 666, 668 (Iowa App. 1986). As always in our consideration of these matters, the welfare and best interests of the children are paramount. In re Henderson, 199 N.W.2d 111, 120 (Iowa 1972).

The children in question are three girls, C.M., S.M., and L.M., born in 1973, 1977 and 1980, respectively. Their parents' marriage was dissolved in 1981, and the dissolution decree placed the children in O.M.'s custody. The children lived with their mother in California until the summer of 1987 when they came to live with their father and stepmother in Iowa. Although not clear from the record, the children were apparently visiting their father

for the summer, and planned to return to California for the 1987-88 academic school year.

Prior to the children's scheduled return to California at the end of the summer, J.M. suspected that his youngest daughter, L.M., had been sexually abused and had L.M. examined by a doctor. The children remained with their father. Upon referral, the State of Iowa filed a petition in November 1987 asking that all three children be declared children in need of assistance due to emotional problems. Upon adjudicatory hearing, the court declared the children CINA, and ordered that until a dispositional hearing could be held, the children were to remain with their father under the supervision of the Iowa Department of Human Services. The court further ordered that the natural parents obtain and complete psychiatric and psychological evaluations. On January 12, 1988, by agreement of the parties, the court continued the matter until February 16, 1988, and the temporary care, custody and control of the children remained with J.M. On February 16, 1988, the court entered a dispositional order in which S.M. and L.M. were returned to O.M. in California. The order additionally provided that C.M. would continue her inpatient treatment for substance abuse and would then be returned to her mother in California.

J.M. has appealed from the dispositional order. He argues that the transfer of the children from his custody

to O.M.'s custody is not supported by the evidence and is not in the children's best interests. He alleges that the court failed to consider evidence that O.M. abuses alcohol and drugs, that she provided inadequate supervision for the children, that O.M.'s former boyfriend sexually abused L.M., and that O.M. engaged in sexual activity in her children's presence.

As we are considering a dispositional order entered pursuant to a CINA adjudication, our review is guided by an examination of the relevant statutory provisions. The dispositional provisions of the CINA statutes provide the juvenile court with three options concerning the legal custody of the juveniles. Upon a CINA adjudication, the court could: 1) conditionally suspend judgment for twelve months, pursuant to section 232.100; 2) enter an order conditionally permitting the children's parent at the time the petition was filed to retain custody, pursuant to section 232.101; or 3) transfer legal custody to one of the alternate placements listed in section 232.102(1). In the instant case, the court, upon adjudicatory hearing, issued an order adjudicating the children in need of assistance and authorized the children's temporary placement with J.M., pending a final order of disposition. Upon dispositional hearing, the court apparently acted under the

authority of Iowa Code section 232.101 in returning the children to O.M.(1)

J.M. argues that the children's transfer from his custody to O.M.'s custody is not supported by the evidence, however, for purposes of clarity, we believe that a more appropriate characterization of the issue in this case is whether the evidence supports transfer of the children's legal custody from O.M., the children's custodial parent, to J.M., their noncustodial parent, subsequent to a CINA dispositional hearing. While it is true that the juvenile court has the authority to transfer custody to the noncustodial parent after a dispositional hearing or modification proceeding, this action is subject to the constraints in section 232.102, including the goal of returning the child to the original custodian as quickly as possible. Interest of Blackledge, 304 N.W.2d 209, 214 (Iowa 1981).

Section 232.102(3) provides in pertinent part:

3. Whenever possible the court should permit the child to remain at home with his or her parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

(a) The child cannot be protected from physical abuse without transfer of custody; or

1. Although the court did not specify the grounds on which its decision was based, we assume that it acted pursuant to this Code section.

(b) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The definition of child-in-need-of-assistance, section 232.2(6), is extensive, but generally alleges conditions caused by the unfitness of a parent due to either his acts or his failure to act toward the child involved. Iowa Code § 232.2(6); see also Interest of J.R.H., 358 N.W.2d at 321.

In the instant case, the record shows that the children were removed from O.M.'s custody due to evidence that C.M., S.M., and L.M. were in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage, and such treatment was not provided for them. See Iowa Code § 232.2(6)(f). Evidence presented at the dispositional hearing focused primarily upon allegations that the youngest child, L.M., had been molested by her mother's boyfriend, Ken Blacksmith, and that O.M. engages in drug and alcohol abuse.

Our review of the evidence supports a finding that O.M. is a fit and proper custodian for these children. By order of the court, O.M. underwent psychiatric evaluation. The evaluation fails to show O.M. suffers from any psychiatric illnesses or deviant behavior. To the contrary, the evaluation indicates that she is quite bright and quite capable of providing the proper parenting for her children. Moreover, a home study conducted by the California Department of Social Services indicates that

O.M. has a suitable residence and receives substantial income as a nurse practitioner to care appropriately for her daughters, and has made inquiries regarding family therapy, sex abuse therapy, and substance abuse halfway house placement in California.

We further fail to find any evidence which supports the allegations that O.M. has a drug and/or alcohol problem or engages in inappropriate behavior in front of her children. Although there is evidence that L.M. was sexually abused by O.M.'s boyfriend, O.M. testified at the dispositional hearing that she has terminated this relationship. We are convinced from the record before us that O.M. is sincere in her desire to help and support her children through these difficult times.

We also note that the record contains evidence that the children's natural father, J.M., became obsessed with the allegations of abuse, and his handling of the matter has had a detrimental effect on all three children. We note, however, that our consideration of this matter has been in no way influenced by a comparison of J.M.'s home with O.M.'s home. See Blackledge, 304 N.W.2d at 215; Interest of S.V., 395 N.W.2d 666, 670 (Iowa App. 1986) (citing Blackledge).

We are convinced from the record that any risk of future abuse of the children in O.M.'s home is minimal and

conclude that no danger is posed by the return of all three children to O.M.'s home. The trial court's decision is hereby affirmed.

AFFIRMED.