

IN THE COURT OF APPEALS OF IOWA

No. 7-177 / 96-1437

IN THE INTEREST OF B.S., A Minor Child,

B.S., Minor Child,
Appellant.

000437

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

Minor child appeals from the juvenile court delinquency review order removing him from his father's custody, and placing him in the temporary legal custody of the Department of Human Services. **AFFIRMED AND REMANDED WITH INSTRUCTIONS.**

Deanna L. Moore, Ankeny, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Cory McClure, Assistant County Attorney, for appellee-State.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

B.S. appeals the juvenile court order placing him with the Department of Human Services for residential placement. We affirm and remand with instructions.

I. Background Facts and Proceedings.

In a delinquency petition filed in December 1995, the State accused B.S. of multiple delinquent acts including four counts of sexual abuse and one count of assault with intent to commit sexual abuse. The juvenile court ordered that B.S. be detained prior to his adjudicatory hearing and that he undergo physical and mental evaluations.

After B.S. admitted two delinquent acts of second-degree sexual abuse, he was adjudicated a delinquent child. B.S. was released to the custody of his father pending a dispositional hearing.

The April 1996 dispositional order provided for continued placement with B.S.'s father. This placement was conditioned on compliance with the remedial provisions of the dispositional order including counseling, therapy and evaluations. B.S. was also required to find employment and was permitted to participate in extracurricular activities with the approval of his juvenile court officer and therapist.

At a June 1996 review hearing, B.S.'s therapist reported that B.S. and his father were not complying with the provisions of the dispositional order. The therapist cited missed therapy sessions and B.S.'s minimal participation in group

sessions. The therapist recommended placement in a residential group home providing a more structured and supportive environment. The juvenile court, based on this recommendation, ordered B.S.'s custody transferred to the Department of Human Services for residential placement.

On appeal B.S. argues that the State failed to make reasonable efforts to permit him to remain with his father. He also argues the juvenile court failed to order the least restrictive placement and the dispositional order is invalid because it does not provide for the duration of his placement.

II. Scope of Review.

Our scope of review in appeals from juvenile delinquency cases is de novo. *In Interest of G.J.A.*, 547 N.W.2d 3, 5 (Iowa 1996).

III. Reasonable Efforts.

Iowa Code section 232.52(6) provides:

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d," "e," or "f," the order shall state reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

In this case, the record includes abundant evidence supporting the State's assertion that reasonable efforts were made to avoid B.S.'s removal from his home. B.S. was extensively evaluated to determine his therapeutic and supervisory needs. The dispositional order was tailored to accommodate these needs while B.S. remained

at home with his father. However, the success of the court's remedial and supervisory objectives was largely dependant on the cooperation of B.S. and his father. We find the juvenile court's decision to remove the child from his home was necessitated by the absence of essential parental cooperation and that reasonable efforts were made to avoid removal. We affirm on this issue.

IV. Least Restrictive Placement.

Iowa Code section 232.52(1) requires the juvenile court to enter "the least restrictive dispositional order appropriate in view of the seriousness of the offense, the child's culpability as indicated by the circumstances of the particular case, the age of the child, and the child's prior record." *In the Interest of B.B.*, 516 N.W.2d 874, 878 (Iowa 1994).

In this case, B.S.'s placement in a residential facility was not initially preferred by the juvenile court. It was only after the less restrictive option of in-home placement failed that more restrictive placements were considered. The seriousness of B.S.'s delinquent acts and the dire consequences of their repetition have serious public safety implications. The juvenile court correctly balanced these concerns with this child's remedial and therapeutic needs in reaching its placement decision. We share the concerns expressed by DHS and the juvenile court and find placement in a residential facility is the least restrictive placement available to accomplish the statutorily mandated remedial objectives. We also affirm on this issue.

V. Duration of the Dispositional Order.

Iowa Code section 232.52(1) provides in pertinent part: “. . . The [dispositional] order shall specify the duration and nature of the disposition. . . .”

The juvenile court’s dispositional order does not expressly provide for the duration of B.S.’s residential placement. Although we have affirmed the nature of the disposition made by the juvenile court, we deem it necessary to remand this case to the juvenile court for the purpose of determining the duration of the placement provided in its modified dispositional order.

AFFIRMED AND REMANDED WITH INSTRUCTIONS.

Streit, J., concurs; Sackett, P.J., specially concurs.

SACKETT, P.J. (concurring specially)

I concur specially. I find the question of whether the State met its dictates to offer reasonable services that would allow B.S. to remain in his home very close.

The State sought to remove B.S. from his father's care because he did not have transportation to therapy sessions, the therapist was not satisfied with B.S.'s progress, and the therapist did not have a good relationship with either B.S. or his father. At oral argument, we learned B.S. is institutionalized.

First, I find reasonable efforts dictates were not satisfied when the State made no effort to provide transportation after it became known B.S.'s father's employment made it impossible for him during the work week to shuttle his son to and from therapy. B.S. lives in Des Moines. Taxi service is readily available in Des Moines and the cost of a taxi ride each week would involve considerable less expense to the State than the cost of placing B.S. in an institution.

Second, it is difficult to judge the nature of the problem between B.S., his father, and the therapist, or what kind of participation in group sessions the worker would expect from B.S. to say his participation is no more than minimal. B.S. and his father may not be totally responsible for the problems. Even the best therapists do not work well with all people. Reasonable efforts dictates may require where there is a conflict with an initial therapist that a different therapist be engaged, especially where the major problem is that the therapist does not hold office hours in the evenings and on weekends when B.S. and his father could attend.

This father, who did not raise B.S., is having problems meeting demands put on him. Additional services would help him meet those demands. If we are sincere in trying to keep children in their home, we must seriously look for ways to do so.

I concur with the majority in deference to the juvenile court's decision on the issue.