IN THE COURT OF APPEALS OF IOWA

No. 0-177 / 89-1362

FILED
AUG 30 1990
CLERK SUPREME COURT

**IN THE INTEREST OF L.M.O.,** A Child.

**L.R.** and **R.O.,**

Appellants.

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Appeal from the Iowa District Court for Cass County, Gordon C. Abel, District Associate Judge.

The child in question was adjudicated a child in need of assistance. In a subsequent dispositional order, the child's preexisting foster care placement was continued. The child's mother and putative father have appealed from the dispositional order. They contend the evidence does not establish the child's foster care placement should be continued. **AFFIRMED.**

W. Edward Anstey, Atlantic, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Valencia V. McCown, Assistant Attorney General, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

**DONIELSON, P.J.**

The child in question is a girl (L.M.O.) born in February 1989. Her mother (L.R.) and putative father (R.O.) are not married to each other but began living together a few months before the child's birth.

The mother has two older children who had a different father. Both of the older children suffered serious injuries in the first few months of their lives; in both cases the injuries were believed to result from child abuse inflicted by their mother. The mother's parental rights with respect to both older children were terminated in 1988.

In May 1989, when L.M.O. was less than three months old, she was removed from the home of her mother and putative father and was placed in foster care. She was later adjudicated to be a child in need of assistance. A subsequent dispositional order continued the child's existing foster care.

The mother and putative father have appealed from the dispositional order. They contend the evidence does not establish that the child's foster care placement should be continued. They argue there was no evidence that this child has suffered from any injury, neglect, or denial of critical care. They assert the only evidence adverse to them concerned the mother's other children, and they argue

the present child should not be removed from their home on the basis of evidence concerning other children.

Our review of this action is de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). After reviewing the circumstances surrounding the removal of L.M.O. from her family home, we conclude her placement in foster care should continue.

The mother's elder children sustained severe physical injuries while in her care. Her daughter, M.R., suffered a double skull fracture, and her son, M.R., Jr., sustained a fractured arm. Attempts to reunite the mother with her older children failed because she was particularly resistive to the provision of services by the Department of Human Services (DHS). L.R. and R.O. testified at L.M.O.'s temporary removal hearing that they had actively attempted to avoid contact with DHS.

While our law mandates a preference for in-home placement of a child, Iowa Code § 232.1 (1989), the welfare and best interests of a child are paramount. In re J.R.H., 358 N.W.2d at 317. We cannot ignore L.R.'s parental history and the need to protect L.M.O. from potential physical abuse. In light of the severity of the injuries inflicted on the mother's older children and her history of uncooperative involvement with DHS, it is appropriate that L.M.O. remain in foster care.

In its order, the trial court specifically ordered the provision of family-centered services and parental

visitation. We encourage DHS to provide these services in pursuit of the overriding goal of reuniting L.M.O. with her parents.

**AFFIRMED.**

Hayden, J., concurs; Sackett, J., specially concurs.

**SACKETT, J.** (concurring in part and dissenting in part)

I concur in part and dissent in part. I concur the child should remain in foster care.

I cannot agree with the majority's decision to do no more than encourage the State to continue to do what they have been doing to reunite this family. First, the State tells us what has been done has not worked. Secondly, our responsibility under federal regulation is greater. We must assure that the agency offers reasonable services to reunite this family or order the State to forego federal reimbursement for the cost of foster care. See U.S.C. §§ 671(a)(15) and 672(a)(2).

This child was never mistreated. When she was removed she was healthy, well-nourished, clean, and without injury of any kind. The basis for removal of the child and her continued separation from her mother is the mother's alleged treatment of two older half-siblings. I have spent hours reviewing the evidence. The issue of whether the mother abused the older children was never litigated. I am not convinced the mother abused the older children. However, I am not convinced she did not.

Before reasonable services can be offered, the problems the family has need to be clearly identified. This has never been done. I would direct that a hearing be held to clearly identify the problems. Then services should be offered that focus on the problems. This mother is able to

adequately feed, clothe, and bathe the child. It appears the problem with the older children was either her inability to choose adequate child care providers or her inability to control herself when she experienced stress. If so, intensive services need to be focused on these problems.

There is a cruel irony in this case. The state removed the child to protect her from harm and injury. At the time of removal, the child had never been injured. The mother complains about the supervision the child received in foster care. While in foster care the child pulled over a pot of hot water. The child was burned. She required nearly a week's hospitalization. She may need skin grafting.