IN THE COURT OF APPEALS OF IOWA

No. 6-675 / 96-0697

FILED
DEC 20 1996
CLERK SUPREME COURT

**IN THE INTEREST OF D.P., A Minor Child,**

**R.P., Father,**
Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge (temporary removal hearing), Michael A. Woods, Associate Juvenile Judge (adjudication hearing), and Arlen J. Van Zee, District Associate Judge (disposition hearing).

The father appeals from the removal order in a CINA case which placed his daughter, D.P., in the custody of the Department of Human Services. **AFFIRMED.**

Penelope C. Souhrada, Davenport, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, William E. Davis, County Attorney, and Gerda C. Lane, Assistant County Attorney, for appellee.

David R. Treimer, Davenport, attorney for mother.

Henry W. Latham, Davenport, guardian ad litem for minor child.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

**PER CURIAM**

This is an appeal by a father claiming the juvenile court should not have entered an order in this CINA case removing his daughter from his care. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Robert and Cheryl are the parents of Matthew, born in 1993, William, born in 1994, and DeeOnalee, born in 1995. Cheryl is also the mother of three older children from previous relationships. Two additional children have died, one of septicemia and one of SIDS.

The five oldest children were removed from Robert and Cheryl's care in December 1994 due to several founded reports of physical abuse and denial of critical care. The children were adjudicated children in need of assistance. The parents have been resistant to services offered by the Department of Human Services (DHS) and have threatened service workers. At one point, Cheryl stated she would rather kill Matthew and William than let another family have them.

When DeeOnalee was born in November 1995, she was immediately removed from the parents' care. In February 1996, the parents had a shouting confrontation with service workers, and Robert stated, "I'll get every one of you." DeeOnalee has also been adjudicated a child in need of assistance. Robert appeals the adjudicatory and dispositional orders concerning DeeOnalee.

**I.** Our scope of review of CINA proceedings is de novo. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa App. 1993). Although we give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, we are not bound by them. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993).

**II.** Robert contends the juvenile court should not have issued an ex parte temporary placement order which removed DeeOnalee from his care immediately upon her birth. We determine this issue is moot. *See In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994). Custody of the child has now been set by the dispositional order. Any error committed in granting the temporary ex parte order cannot now be remedied. *Id.*

**III.** Robert claims that in the dispositional order the court erred in finding reasonable efforts had been made to prevent the removal of DeeOnalee from the home. He believes DHS should have offered intensive family preservation services in order to allow the child in remain in the home after her birth. Here, the family was receiving services designed at reunification at the time DeeOnalee was removed from the home. We determine reasonable efforts were being made.

**IV.** Robert asserts the juvenile court erred in taking judicial notice of prior proceedings involving the parents' other children. In Iowa, the juvenile court is authorized to judicially notice the pleadings and exhibits from previous CINA

proceedings involving the same child or children. *A.M.H.*, 516 N.W.2d at 873. We find evidence of the past care of other children in the same family is relevant to the question of the parents' ability to care for DeeOnalee, and we find no error in the district court's consideration of this evidence.

V. Robert contends there is insufficient evidence to support the juvenile court's adjudication that DeeOnalee was a child in need of assistance. He seeks to have us reconsider the past founded child abuse reports. Robert's challenges to the founded child abuse reports should have been made through proper channels at DHS after those reports were issued. We do not address in this proceeding whether the reports were properly determined to be founded.

We find there is clear and convincing evidence DeeOnalee was a child in need of assistance and should be placed in foster care. The evidence showed the parents had not fully addressed the issues which caused the abuse of the older children. Also, the parents were resistant to services and projected hostility toward service workers. We find DeeOnalee could not be safely returned to Robert's care at the time of the dispositional hearing.

We affirm the decisions of the juvenile court. Costs of this appeal are assessed to Robert.

**AFFIRMED.**