IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF L.H. AND T.H., Children;

L.H. and T.H., Children

Appellants.

Filed April 22, 1987

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86-906

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Appeal from the Iowa District Court for Muscatine County (No. 2230) - James A. Weaver, District Associate Judge.

Two children appeal from the dispositional order entered after they were adjudicated children in need of assistance, asserting that the trial court should not have allowed their father unsupervised overnight visitation with them. **REVERSED AND REMANDED.**

Julie A. Abell, Muscatine, for appellants.

Robert DeKock of DeKock Law Office, Muscatine, for appellee T.H., the natural mother.

Katheryn Egenberger, Muscatine, for appellee D.H., the natural father.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

SACKETT, J.

We must determine whether the trial court should have ordered supervision of a father's visitation with his two minor children, L.H. and T.H., who have been adjudicated to be children in need of assistance because of sexual abuse. The parents of the children are divorced and the children are in their mother's custody.

In May, 1985, a CHINA petition was filed alleging L.H. and T.H. were sexually abused by their father, D.H. At the time the petition was filed, the children were five and three years old respectively. The petition was based upon a founded sexual abuse report on file with the Department of Human Services and a professional evaluation of the children conducted by a sexual abuse treatment program. That evaluation, which was conducted without the father's participation, concluded that he had sexually abused both children. Following the filing of the petition, the children were evaluated at the Child Development Clinic at the University of Iowa Hospitals and Clinics in Iowa City, Iowa. That evaluation resulted in a determination that L.H. had been sexually abused. The perpetrator could not be determined. The evaluation also found the question of sexual abuse to be undetermined with respect to T.H.

An adjudicatory hearing was held at which the juvenile court accepted a stipulation of the parties and adjudicated the children to be in need of assistance under Iowa Code §232.6(d) (1985). Section 232.6(d) defines children in need of assistance those who have been "sexually abused by [their] parent, guardian, custodian or other member of the household in which [they] reside[]." The stipulation did not address the issue of who perpetrated the sexual abuse. The juvenile court found no need to identify the perpetrator and declined to do so. The juvenile court noted its "inability to identify a specific perpetrator to a degree of

certainty the court believes would be proper . . . ." The court removed the supervision requirements which had earlier been placed on the father's visitation rights.

The attorney for the minor children has appealed in their behalf contending the trial court should have ordered visitation with their father be supervised.

The mother filed a brief but took no appeal from the final order. An appeal is taken and perfected by filing a notice with the clerk of the court where the order, judgment, or decree was entered. Iowa R. App. P. 6(a). A timely filing of a notice of appeal is jurisdictional. Lutz v. Iowa Swine Exports Corp., 300 N.W.2d 109, 110 (Iowa 1981). We refuse to entertain the mother's appeal. See Doland v. Boone County, 376 N.W.2d 870, 876 (Iowa 1985).

We address the children's contention that any visitation rights the father is allowed should be supervised. Our review is de novo. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Iowa Code §232.96(2) (1985) provides that the allegations of CHINA petitions must be proved by clear and convincing evidence. This standard, although less than the burden of proof beyond a reasonable doubt, requires more than a mere preponderance. In re Henderson, 199 N.W.2d 111, 121 (Iowa 1972). For evidence to be "clear and convincing" it is necessary that there be no serious or substantial doubt about the correctness of the conclusion drawn from it. Baim v. Stancel, 339 N.W.2d 621, 624 (Iowa App. 1983).

This case has a troublesome history. An earlier CHINA petition based on substantially similar allegations was dismissed by the juvenile court because of insufficient evidence. An allegation that the father had denied L.H. and T.H. critical care was determined unfounded by the department. Later, allegations of physical and sexual abuse were determined to be unfounded and undeter-

mined respectively. The father had again been named as the perpetrator. These charges have also been a part of a custody fights. Furthermore, there are allegations that the mother's charges of sexual abuse have been unfounded and the multiple investigations have had an adverse effect on the children.

The mother has exposed the children to sexual themes and discussions at an inappropriate development age. There is concern about inappropriate parenting responses by the mother, particularly her extreme concern over the children's bowel movements and the overemphasis of medical attention to two basically healthy children.

There is no argument but that the older child was sexually abused. She identified her father as sexually abusing her. After an extensive investigation, Dr. Randell Alexander, psychiatrist and assistant professor of pediatrics at University of Iowa Hospitals and Clinics, determined "the only and recurring evidence points to the father as perpetrator."

We note the juvenile court did provide the department should continue to provide services to both parties, which we assume would include a mandatory sexual abuse treatment program for the father and therapeutic counseling for the mother. We do agree with the children, however, that the record before the juvenile court supported a determination the father's visitation should be supervised. We remand to the juvenile court for this purpose.

In addition, we note the juvenile court has ordered the case automatically terminated on April 28, 1987. We find the CHINA petition should not terminate without a juvenile court order to that effect.

REVERSED AND REMANDED.