IN THE COURT OF APPEALS OF IOWA

No. 1-360 / 91-183

FILED
OCT 29 1991
CLERK SUPREME COURT

IN THE INTEREST OF A.S. AND Z.S.,
Minor Children,

H.S., Father,

Appellant.

Appeal from the Iowa District Court for Kossuth County W.B. MacDonald, District Associate Judge.

Natural father appeals a district court order approving the juvenile referee's decision finding the children in need of assistance and placing them in foster care. **AFFIRMED.**

T.J. Braunschweig of Braunschweig Law Firm, Algona, for appellant.

Douglas M. Beech of Lynch, Lynch, Fenchel & Doster, Algona, as guardian ad litem for children (appellee).

Bonnie J. Campbell, Attorney General, John M. Parmeter and Kathrine S. Miller-Todd, Assistant Attorneys General, for appellee State.

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

OXBERGER, C.J.

H.S. is the natural father of A.S. and Z.S. The father was a single parent at the time these proceedings were instituted. Beginning in April 1985, the father sought services through the Department of Human Services, as well as other agencies for his children.

In April 1989 the State filed a child in need of assistance (CINA) petition concerning the children pursuant to Iowa Code section 232.2(6)(b), (c)(1), and (c)(2). In June 1989 the initial CINA adjudication, pursuant to section 232.2(6)(c)(2), was approved by the court. A dispositional hearing was scheduled.

After several adjudication and dispositional hearings, the juvenile court referee issued her order finding the children to be children in need of assistance and placing the children with the Department of Human Services for foster family care. The father then sought review in district court. Eventually, the district court entered its order affirming the juvenile court's CINA adjudication and disposition. The father has filed this appeal. On appeal, the father's primary contention is that the evidence does not support a CINA adjudication nor placement in foster care.

In CINA proceedings, we review the evidence de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interests of the

child. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). We must review the record to determine whether the finding of a child in need of assistance is supported by clear and convincing evidence. Iowa Code § 232.96(2) (1991). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact because that court has had the unique opportunity to hear and observe the witnesses first hand In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986).

NOTICE: We first consider whether the father received sufficient notice of the amendment to the petition. A court hearing occurred on May 8, 1989. At that meeting, the State noted for the record:

> ...if the evidence should show clear grounds, we'll amend the petition at that time.

Counsel for the father was present when this record was made. At the beginning of the dispositional hearing on September 5, 1989, the State moved to amend the petition. The father denied the amended petition, and the parties proceeded with a combined adjudicatory/dispositional hearing. The Father challenges the attempt to amend the petition. He asserts there was lack of notice which was an impermissible procedure and a denial of his due process. We disagree.

In, In re R.E. and T.E. 426 N.W.2d 723 (Iowa App. 1990), this court considered the sufficiency of notice to a mother in a proceeding to terminate her parental rights.

The mother asserted she had not received sufficient notice of the proceeding and claimed a violation of her due process. This court found the termination proceedings were merely a continuation of the CINA proceeding. Id. at 725. Because the mother could be reasonably expected to know of the continuing nature of the proceedings, she was on notice of the termination proceedings as well. In addition, the mother's attorney was aware of the hearing. It is a familiar rule that notice to an attorney in respect to a matter in which he or she is then acting for a client is notice to the client. Id. at 726, citing Perpetual Savings & Loan Association v. Van Atten, 211 Iowa 435, 438, 233 N.W. 746,747 (1930).

In the present case, not only was the father aware of the CINA proceedings, but his attorney was present at the May 8, 1989 meeting when the State gave notice on record "...if the evidence should show clear grounds we'll amend the Petition at that time". We find the preceding CINA action and the knowledge of his counsel that an amendment could be pending constituted constructive notice. We affirm the trial court on this issue.

EVIDENCE TO SUPPORT THE FINDING: We first consider whether there was clear and convincing evidence to support the juvenile court's finding under Iowa Code section 232.102(4) (1989). The father asserts there is no evidence to support the court's determination. We disagree.

Iowa Code section 232.102(4) provides:

> Whenever possible the court should permit the child to remain at home with the child's 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
>
> 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 State asserts the juvenile court and the district court correctly concluded that placement of the children in therapeutic foster care was in their best interests. We agree. The State, in its brief, relies upon no assertion or evidence that the children are in need of protection from physical abuse. Dr. Hennessey, a child psychologist, testified the children should be placed in therapeutic foster care for two years. The recommendation was based upon the concern that the home environment did not provide for the children's needs. The father's psychiatrist testified regarding the children:

> It becomes quite clear that they (the children), have not been provided with consistent, effective support and guidance as they are both highly aggressive, impulsive, poorly socialized and undisciplined...No doubt they are very needy children who crave for attention, caring and love. I have no opinion as to whether H.S. is capable of taking care of them for the reasons indicated above, but it will take a heroic amount of patience and time, ability, along with emotional stability on his part to take care of these needy children alone.

In May 1989 the father began receiving homemaker services and therapy from an in-home family therapist. In

August 1989 the homemaker indicated little progress had been made in the home environment. The in-home family therapist stated:

> "throughout the treatment period it has seemed difficult to get into true clinical issues because the father has been invested [sic] in making things seem to be going fine with his parenting and his personal life. He has been comfortable with talking about things on a surface level."

The juvenile court concluded:

> H.S. has been in a unique position. Not only has he had services provided to him prior to the dispositional hearing, he had services provided to him for the six months this dispositional hearing took. He has had more than ample opportunity to prove to this court that he can care for the needs of he and his children. Kim Hansen, family center services, homemaker services counseling, the Area Education Agency, preschool, head start, protective day care, sources of funding for rent and medical subsidies, source of funding for glasses for Z.S., and the Department of Human Services are some of those being provided to H.S. Yet, on February 20, 1990, H.S. is in danger of being evicted, due to nonpayment of rent, and uncleanliness, Z.S.'s and A.S.'s caretakers continue to be numerous.

We find the efforts to prevent or eliminate the need for the removal of the children from their father's home have been reasonable. This court does not question the love this father has for his children. His affection for the children has not been on trial. We find however, in light of the numerous attempts to improve both the children's and the father's situation, and the testimony of experts examining the children that the trial court's action was supported by clear and convincing evidence. The positive efforts of this father do not go without notice by

this court. The children are six and seven years old. Because the children are still young, his visitation and continued contact with the children in the foster home setting should be very liberal. The length of time for therapeutic foster care should continue no longer than the time necessary to develop a positive environment in which to return the children to their father.

We have considered all other issues presented and affirm the trial court.

AFFIRMED.