FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF R.E., G.E., N.H., and C.H.,	)	
Children,	)	Filed December 27, 1983
D.H., Father,	)	3-399
Appellant.	)	83-514 & 83-515

Appeal from Jasper District Court - Thomas Mott, Associate Judge.

The father has appealed from his denial by the juvenile court of visitation insofar as it concerns his two natural children. He contends the denial of visitation was not warranted by the evidence and was not the least restrictive disposition available. AFFIRMED.

Roger D. Vos of Sorenson, Johnson & Vos, Newton, Iowa, for appellant-father.

Dennis F. Chalupa of Brierly, McCall, Girdner & Chalupa, Newton, Iowa, for appellee-mother.

Christopher Cogley, Assistant Jasper County Attorney, for the appellee-State.

Gerald B. Feuerhelm of Matthias, Tyler, Nuzum & Feuerhelm, Newton, Iowa, guardian ad litem for the children.

Considered by Snell, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

The juvenile court found the four children involved here to be children in need of assistance. The children were permitted to remain in the home of their mother, subject to supervision by the department of social services. However, the juvenile court provided that the mother's estranged husband, who is the natural father of the two younger children and the stepfather of the two older children, should not have any visitation or other contact with any of the children. The juvenile court found clear and convincing evidence that the father had "engaged in a rigid pattern of extraordinary emotional abuse" and had frequently administered "extraordinary and torturing physical abuse."

The father has appealed from the juvenile court's order insofar as it concerns his two natural children. He contends the denial of visitation was not warranted by the evidence and was not the least restrictive disposition available.

The juvenile court's CHINA adjudications and dispositions were performed in two separate proceedings. The first proceeding covered the father's two stepchildren and the older of his natural children; the second proceeding covered the younger natural child. The father filed a separate notice of appeal from each ruling; the two appeals have been given adjacent docket numbers (83-514 and 83-515), involve identical issues, and were made ready on the same date. The two appeals are consolidated for submission and decision. We uphold the trial court and affirm the decision.

I. **CHINA Adjudication.** Appellate review of CHINA proceedings is **de novo.** Iowa R. App. P. 4; In Interest of Welcher, 243 N.W.2d 841, 843 (Iowa 1976). We accord weight to the findings of the juvenile court, particularly where the credibility of witnesses is at issue; however, we are not bound by these findings. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

Proceedings pursuant to a CHINA adjudication are not penal in nature, and this is reflected in the standard of proof required of the State. Allegations

supporting a CHINA adjudication need not be proven beyond a reasonable doubt, but rather need only be proven by "clear and convincing" evidence. Iowa Code § 232.96(2). The term "clear and convincing" means the establishment of facts "by more than a preponderance of the evidence, but something less than establishing a factual situation beyond a reasonable doubt." In re Henderson, 199 N.W.2d 111, 121 (Iowa 1972). For evidence to be "clear and convincing," it is merely necessary that there be no serious or substantial doubt about the correctness of the conclusion drawn from it. See Words and Phrases, Permanent Edition, vol. 7, at 623-24.

In support of our upholding and affirmance of the juvenile court in its final decisions and orders "that there should not be any contact between D.H. (hereinafter referred to as D.) and the children until there has been a definite, positive showing of some substantial changes in his mental and psychological condition," we deem it not only appropriate but necessary to set forth some of the appellant's (D.'s) conduct and behavior toward his children and certain acts committed upon them which we find to be atrocious and particularly reprehensible. From the record before us we recite, in part, as follows:

> 1. When two of the children were 1 to 3 years of age, D. tied them inside plastic bags up against the wall, turned off the lights, and left them there for hours. When the children were released from the bags, they could not walk or sit down;
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> 2. A son, R., had to stay in his bedroom and stand on a chair to play with the toys on a shelf;
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> 3. A daughter, G., had to sit by her toybox and could only play with toys that were given to her;
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> 4. The children had to walk to the dinner table at a certain pace, with R. in front of G. and to say thank-you for their dinner, all with the threat of going into the (plastic) bags;
>
> 5. If the children weren't eating or in the (plastic) bags, they were in their rooms or in one position at all times;
>
> 6. The children were never allowed to wear shoes in the house;
>
> 7. The children were hardly ever allowed to watch television;

8. When a daughter, G., was 1 to 2 years of age, the mother, P., was made to pin her inside of her sheet so that she would not get up in the night;

9. If mother, P., disagreed with D.'s directions, he made it much worse for the children;

10. The children were made to chant one-half hour before and after their church meetings "I will not move my hands or my feet at the Kingdom Hall;"

11. One time D. had beat the daughter, G.'s, face so badly that mother, P., described it as beyond recognition, "mutilated," and "puffy;"

12. If the children went to the bathroom in their pants they had to wear them over their heads;

13. Children R. and G. had to sleep on a cot in a closet-type room when there were two empty bedrooms available upstairs;

14. D. beat son, R.'s, hands until they were huge and black and blue, because he bit his finger nails;

15. Son, R., had to play in a cow pasture with cows and not in his yard;

16. The children had to go to the bathroom outside in an outhouse at one of their homes even though a bathroom was available in the house;

17. Daughter, G., was only allowed to play in the swing set area, she had to stay on the swing set at all times. She was petrified of straying from that area;

18. When one of D.'s other sons was at home, he beat him every Friday regularly while his son, R., had to observe;

19. Son, R., was required to constantly pick grass out of a large driveway, bent over with his legs straight, and D. called him names if he missed any pieces of grass. Also, son R. was required to spend countless hours picking pieces of lint off the floor;

20. When son R. was in the hospital for ear problems D. did not allow mother, P., to visit him. D. took the keys from the family car so P. could not take son R. to the doctor.

The above recitals are a mere sampling of the record evidence before the juvenile court and this court on appeal. In addition, the record is replete with other bizarre acts and behavior by father D. towards the children, including sexual, physical, and emotional abuse which, no doubt, have inflicted undelible trauma upon the children.

The juvenile court, prior to the final dispositional hearing, had permitted numerous and repeated efforts by all parties, their counsel, social workers, and the court itself, protective visitation and contact between father D. and the children to no avail or improvement in the father-children situation and relationships.

Social workers and members of the family testified at the hearings, however, the appellant-father, D., did not testify.

Keeping in mind the precepts and principles which appellant asserts and relies upon to continue his supervised visitation, to wit: 1. best interest of the children is the polestar consideration in any disposition; 2. right of association between parent and child is a zealously guarded right and the court should protect that right if at all possible; 3. dispositions made in CHINA hearings must be supported by clear and convincing evidence; and 4. visitation or denial thereof should not be made to appease one parent or punish the other. We conclude the record made in the two final dispositional hearings, consolidated here on appeal, overwhelmingly supports the juvenile court's final orders.

We take note of Mr. Winecoff's, a social worker in this case, testimony that D., the appellant-father, had not been totally honest with him. Also, we note with interest the testimony of Miss Thompson, another social worker, that as a result of her own investigation, the chidren were petrified of D. She stated the children were like trained robots and D.'s home was like an institution, and that D. is a manipulator, he keeps on you until he beats you down.

We do not disagree with appellant's basic precepts and principles asserted in his briefs, however, we hold the evidence in these hearings, upon which appeals are taken, is clear and convincing, upon considering the best interest of the children, that the juvenile court's final dispositional orders were the least restrictive disposition, in transferring legal custody to the mother, subject to the terms and conditions that the father D. shall have no visitation at the present.

In a recent Supreme Court case concerning a child termination proceeding, In the Interest of C. and K., Children, 322 N.W.2d 76 (Iowa 1982), the Court stated at page 81:

> If it can be imagined or even hoped that [this parent] might one day develop enough rudimentary skills to function adequately there is no way this could be done in time for these children. The precious and crucially important days of childhood move inexerably. Nature allows no continuances. We have said many times that children cannot wait to grow up. Tragic and pathetic as these circumstances are for [the parent], and harsh though the result surely must seem to her, the disaster that would result to the children upon return is too obvious for us to ignore. The State has more than borne its burden of proof.

Parental rights were not here terminated.

Accordingly, we affirm the juvenile court.

AFFIRMED.