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JUN 29 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.P. AND H.P., Children

C.P., Father

Appellant.

Filed June 29, 1988

8-235
87-1316

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Appeal from the Iowa District Court for Woodbury County (No. 3449 JU) - Brian L. Michaelson, Juvenile Referee.

Appellant father appeals juvenile court order terminating his parental rights.

REVERSED AND REMANDED.

Daniel C. Galvin, Sioux City, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Valencia Voyd McCown, Assistant Attorney General, for appellee, the State of Iowa.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

The issue here is whether there is clear and convincing evidence two children, a boy, D.P., born in 1982, and a girl, H.P., born in 1983, cannot be returned to appellant, their father. We determine there is no clear and convincing evidence the children cannot be returned to their father. We reverse and remand.

The two children were removed from their parental home and placed in foster care while in the care of both parents. The children were determined to be children in need of assistance in June 1984. Their mother, who is not a party to this appeal, and appellant were divorced in January 1985. The mother has had serious mental problems and her abuse of and inability to care for the children were some of the reasons for removal. However, at the time of removal one child had bruises resulting from punishment inflicted by the father. The bruises were not serious enough to require medical treatment. The father concedes his parenting skill may have been lacking when the children were removed but contends he has improved.

Our review is de novo. In re Welcher, 243 N.W.2d 841, 843 (Iowa 1976); In re Thompson, 241 N.W.2d 2, 4 (Iowa 1976).

We adjudicate rights anew. In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). The question before us is has the State established by clear and convincing evidence the children will suffer harm specified in Iowa Code section 232.2(5) if returned to their parents. Id. Since removal the father has maintained weekly visits with the children. He has regularly attended parenting classes. Certain parenting techniques he uses are determined to be inappropriate by supervising case workers. Complaints that have been made about his care of the children since July 1984, during the visitation period include C.P.'s leaving H.P. on the couch with a bottle, his feeding D.P. hot peppers and spicy foods, his failure to wipe H.P.'s nose, the

fact that D.P. burned his thumb on a lighter, the fact D.P. urinated outside the house, the fact the children were in the yard with glass; H.P. was chewing and running with a broken comb, C.P. allowed H.P. to climb on cement steps, he told D.P. the best way to take off his mittens was to step on them, C.P. denied H.P. a second glass of juice, when H.P. came into the kitchen where he was cooking he took her toy and threw it into the living room, he didn't have a washcloth to wash faces, he scared the children with a Halloween mask, he gave D.P. a dart gun with darts with rubber tips and let D.P. keep the dart gun even though D.P. was shooting the gun in his mouth. A summary report of Gena M. Loveall showed 139 supervised visits occurred with the father.

From July 1984 notes show:

July 1984: There were seven visits scheduled. One failed appointment. One canceled appointment. On the other five visits C.P. did very well with kids. A lot of interaction and playing. Also took D.P. to bathroom and changed H.P. and fed without prompting.

Aug. 1984: Seven scheduled visits. C.P. was present for five of the visits. Things continued to go well with good effort at interacting on C.P.'s part. Had to be prompted to take D.P. to bathroom so he didn't wet pants.

Sept. 1984: Eight scheduled visits. C.P. present for seven of the visits. Sept. 9 - not much interaction but C.P. very firm and appropriate about not letting D.P. eat too much of candy grandma had brought him and remained firm despite D.P.s temper tantrum. On visits of 7th, 17th, and 26th not much interaction with kids. On 12th, 14th and 24th interaction was positive and good. Played with kids and paid a lot of attention to them.

Oct. 1984: Eleven visits were scheduled for Oct. Due to problems between A.P. and C.P., C.P. was only present for one visit on October 3rd. No interaction with kids. Appeared confused and withdrawn.

Nov. 1984: No scheduled visits for C.P.

Dec. 1984: Two scheduled visits for C.P. On both visits C.P. played with kids good interaction. Let them play in drawers; H.P. got finger pinched two times. No toys for them to play with.

Jan. 1985: Four scheduled visits. C.P. paid lot of attention to kids on all four visits. Was very patient with D.P. in teaching him to ride

three wheeler and not be afraid of it. Let D.P. play with stereo and TV. Took D.P. to bathroom and changed H.P.'s diaper with no prompting. Had difficulty on three of the visits with D.P. running over H.P. with three wheeler and C.P. not be firm in stopping him.

Feb. 1985: Three scheduled visits for C.P. C.P. discussed nutrition. Also took D.P.'s temp when he became ill during the visit. On 2-20 and 27 had kids outside to play. C.P. appeared to have difficulty in watching what the kids were doing while outside and keeping eye on both of them without prompting.

March 1985: Four scheduled visits. On two of the visits C.P. asked advice on how to tell D.P. no and what to do if he threw tantrum and wouldn't respond. On third visit worked on being firm and telling D.P. no and not giving in to tantrum. Fourth visit wanted to know how to tell H.P. no. Explained it was same process as with D.P. and just took a lot of patience and firmness and consistency.

April 1985: Four scheduled visits. On 4-24 took D.P. to Dr. C.P. very appropriate with kids at the Dr.'s office. Not as much interaction with kids as have had, seemed more interested in talking.

May 1985: Four scheduled visits. C.P. firm about talking D.P. threw a tantrum and patience. Also worked with D.P. on pulling up pants after going to the bathroom. Held a cig. lighter in front of H.P. said that is way she would learn that things were hot. Still appears to have difficulty in watching kids while they are outside.

June 1985: Five scheduled visits: Visits went okay. discussed ways of encouraging kids to eat as they are always hungry when they arrive back at fosterhome according to foster mom. C.P. said he was fixing them meals but they wouldn't eat. Both kids had scratches and bruises throughout the mouth but neither C.P. or foster mom seemed to know how or when they occurred.

July 1985: Five scheduled visits. One week missed due to C.P. being ill. Nutrition continued to be a problem. Foster mom complained C.P. sending kids back with frozen burrito and pop. C.P. said he cooks but kids continue not to eat. Again went over ways to encourage them to eat. Kids continue to have scratches and bruises.

Aug. 1985: Six scheduled visits. Not much interaction with kids. C.P. saw D.P. urinate outside said he (C.P.) should probably take him to house but didn't. 8-20 - failed visit. Not much interaction. C.P. had police there to fill out report from someone breaking into his car. D.P. told C.P. three times he had to go potty. I reminded him two more times before he took D.P. to the bathroom. 8-28 and 27 again not much interaction. Moving to apartment at 606 Center. Kids continue to be scratched and bruised. C.P. still seems to experience difficulty watching kids while they are outside.

Sept. 1985: Seven scheduled appointments. One failed. On 9-10, 24 & 25 C.P. played with kids fairly good interaction. Again discussed

need to keep closer eye on kids. Foster mom stated coming back bruised, scratched and dirty. C.P. returned kids from visits (unsupervised) early two times as had nothing to feed them. C.P. had also gotten motorcycle and was taking D.P. for rides. C/w asked me to discuss this with C.P. He stated he didn't see any danger in taking him on motorcycle.

Oct. 1985: Eight visits. Totally supervised visits resumed October 21. C.P. continued to take kids back to foster home early as had nothing to feed them. Discussed getting a box of crackers to have on hand to tide them over until suppertime when he returned them to foster home. C.P. also upset because on four of the visits D.P. had wanted to leave and go back to the foster home. On Oct. 1st and Oct. 31st C.P. had good interaction with kids. On other visits he seemed withdrawn and did not pay much attention to kids.

Nov. 1985: Eight scheduled visits. One failed. 11-6 H.P. playing with electric wall outlet and trying to stick toy in it. C.P. did not notice until it was pointed out to him. Discussed buying caps for them. Withdrawn and not much interaction with kids today. C.P. appeared moody and hostile and felt people were working against him. 11-12 C.P. had gotten safety caps for outlets. On 11-26 C.P. again did not interact much with kids. On rest of visits there was some interaction. On 11-25 C.P. did a very good job of dealing with D.P.'s tantrum. Talked him through it and used time out.

Dec. 1985: Six visits. On 12-3, 9 and 18 good interaction with the kids and awareness of what they were doing. 12-13 and 23 did not pay lot of attention to kids and they would have to speak to him several times to get his attention.

Jan. 1986: Nine scheduled visits. On all but two of the visits C.P. played and interacted with kids. C.P. only took H.P. to bathroom without prompting on two of the visits and returned her to foster home with wet pants on one visit even though he stated he had diaper in car he could have put on her. D.P. started throwing large tantrums after one hour supervised visits were started. On one occasion C.P. told D.P. if he didn't stop tantrum G. would get mad and spank him. I replied that wasn't true and that didn't seem to be an appropriate way to stop tantrum. C.P. replied if it worked it was okay.

Feb. 1985: Eight visits scheduled. One cancelled due to C.P.'s work schedule. D.P. continued to throw tantrums whenever told no when time to leave. Except for three of the visits when C.P. played with the kids and watched what they were doing without prompting, the rest of the visits he watched TV and laid on the couch and had to be prompted to take H.P. potty or check and see what they were doing.

March 1986: Eight visits. C.P. interacted good with kids on all but two visits. On 3-26 H.P. was trying to get C.P. to help her take her coat off but could not say off. C.P. kept saying you have an "ow"

pointed out she was trying to say off but C.P. continued to ignore what she wanted and repeating you have an "ow". Said she needed to learn how to say it right. Tried to explain that might be easier for her if he showed her the right way to say it and then help her get coat off. D.P. did not throw any tantrums when time to leave this month.

April 1986: Seven visits. C.P. paid lot of attention and played with kids on two of visits. Rest of visits laid on the couch except to fix snacks and did take H.P. potty without prompting several times. On three of visits kids wanted to sit on my lap and play. Tried to encourage them to go play with dad but C.P. did not respond to that.

May 1986: Seven visits. Except for fixing snacks and some discipline not a lot of positive interaction this month. D.P., on three of the visits, kept asking if it was time to leave.

June, 1986: Seven visits. C.P. spent most of visits lying on couch. On three of visits he did start trying to play with kids toward end of visit.

July 1986: Nine visits. C.P. paid lot of attention to the kids and playing with them on all the visits. Still seems to have trouble watching what they are doing when outside. D.P. wanted to leave on three of the visits and go back to foster home.

August 1986: Seven visits. One cancelled. D.P. refused to go on two visits so only four visits. Not much interaction, C.P. stayed on couch most of visits.

Sept. 1986: Visits suspended.

Oct. 1986: One visit.

Nov. 1986: Two visits.

Dec. 1986: Two visits. Visit of 12-22 C.P. watched kids and tried to play with them.

Jan. 1987: Two visits. Cockroaches bad. C.P. fixed kids lunch interaction fairly good mostly just watched them.

Feb. 1987: Two visits.

The father currently has stability in housing and employment. The father is not perfect. He has exhibited stability and maintains a home. He has shown a continual and constant interest in his children as shown by his utilization of visitations. Other than the bruising when the children were removed, which

bruising did not require medical treatment, there is no evidence he has harmed the children physically in any way. The father has attended parenting classes, and cooperated well with the workers.

There is not clear and convincing evidence the children cannot be returned to the father. See In re Blackledge, 304 N.W.2d 209, 214-15 (Iowa 1981). We agree the children should remain CHINA. We remand to the trial court to make orders implementing the children's return with adequate supervision to the father's home.

REVERSED AND REMANDED.