IN THE COURT OF APPEALS OF IOWA

No. 6-677 / 96-0714

000163

FILED
JAN 29 1997
CLERK SUPREME COURT

IN THE INTEREST OF J.H., A Minor Child,

L.H., Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Juvenile Judge (adjudicatory order), and Arlen Van Zee, District Associate Judge (dispositional order).

The mother appeals from a dispositional order placing her child in foster care in this CINA case. **REVERSED AND REMANDED.**

Robert J. Phelps of Phelps & Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee State.

Neill A. Kroeger, Davenport, guardian ad litem for minor child.

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

PER CURIAM

The mother appeals from a dispositional order in a child in need of assistance case which placed her child in foster care. We reverse and remand in this memorandum opinion, pursuant to Iowa Supreme Court Rule 9.

Lisa is the mother of Jordan, born in 1985, and Jared, born in 1990. Lisa has some health problems due to the fact she has diabetes and is legally blind.

In August 1995, the Department of Human Services (DHS) issued a founded report that Jordan had been sexually abused by Lisa's boyfriend, Darren. Darren is Jared's father. In September 1995, DHS issued a founded report that Lisa had physically abused Jordan by striking him with a spoon. At this time Jordan was also having problems at home and in school. The juvenile court adjudicated Jordan a child in need of assistance. He was placed in the custody of Lisa.

In February 1996, the juvenile court entered a temporary order removing Jordan from the home and placing him in foster care. The court found Lisa had failed to adequately supervise Jordan because he often came to school late and would fall asleep while at school. After a hearing, in March 1996, the juvenile court entered a dispositional order placing Jordan in foster care. Lisa now appeals the dispositional order.

Lisa contends the juvenile court abused its discretion in placing Jordan in foster care. She believes the State failed to show Jordan would be subjected to harm if returned to her care. She asks to have Jordan returned to her home.

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).

The placement of a child after a dispositional hearing is discussed in Iowa Code section 232.102(5), which 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.
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> The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

In our de novo review of the evidence in this case, we find the State failed to present clear and convincing evidence Jordan would be subjected to physical abuse or some other harm if placed in the custody of Lisa. A no-contact order was entered prohibiting Darren from seeing Jordan. The evidence showed Lisa has taken steps to make sure Darren does not have access to Jordan.

Lisa has been receiving family centered services to improve her parenting techniques. She also receives counseling to help her deal with depression. Jordan receives sexual abuse counseling. There have been recommendations Lisa receive a substance abuse evaluation, take parenting classes, learn stress management techniques, and work with teachers concerning Jordan's behavior in school. There have also been recommendations that Jordan receive anger management treatment and a psychological evaluation.

While obviously all of this family's problems have not been solved, we do not believe an out-of-home placement for Jordan is necessary. We reverse the dispositional order of the juvenile court and find that Jordan should be returned to the care of Lisa. We determine, however, Jordan is still a child in need of assistance and remand to the juvenile court for continued supervision of this case.

REVERSED AND REMANDED.