

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1989

CLERK SUPREME COURT

IN THE INTEREST OF J.G.,)

A Child.)

P.B., Mother,)

Appellant.)

8-664
88-862

179

Appeal from the Iowa District (Juvenile) Court for Linn County (J 11753), Sylvia A. Lewis, Juvenile Referee.

The natural mother appeals from the juvenile court's adjudication of her son to be a child in need of assistance and the transfer of the child's physical custody to the natural father. **AFFIRMED.**

Patrick R. Grady of the Linn County Public Defender's Office, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

Richard M. Feeney, Cedar Rapids, guardian ad litem for the child.

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

HAYDEN, J.

The natural mother appeals from a juvenile court action adjudicating the child to be a child in need of assistance, transferring his custody from the mother's home to the natural father's home, and restricting visitation with the mother.

The child here is a boy born in October of 1975. His parents dissolved their marriage in 1976, at which time the child's custody was placed with the mother, as were his three older siblings. J.G. continued to live in his mother's home until early 1988.

In 1980 the mother remarried. Since then the stepfather has been accused on several occasions of sexually abusing J.G. or his two sisters. In 1987 one sister was adjudicated to be a child in need of assistance due to sexual abuse and was placed in the home of the natural father, where another sister and brother were already residing. In January 1988 J.G. was also adjudicated a child in need of assistance due to sexual abuse by the stepfather. In a subsequent dispositional hearing, J.G. was also placed in the home of the natural father. The dispositional order granted the mother visitation rights, to be scheduled by the Iowa Department of Human services, but directed visitation with the stepfather should be avoided or at least be restricted and supervised. A ruling which, in effect, restricted the natural mother's visitation rights.

The mother challenges the sufficiency of the evidence to support the transfer of the child's physical placement from her home to the natural father's home. In addition, she contends the juvenile court unduly restricted her visitation with the child, complaining the restriction on the stepfather's visitation makes it impossible for her to have unsupervised in-home visits with the child.

Our review is de novo. Iowa R. App. P. 4.

I.

The juvenile court determined evidence of the natural mother's new husband's past sexual acts with her children; evidence of his continued desires toward children; and evidence of the adequacy of the natural father's home was sufficient to modify J.G.'s placement pursuant to Iowa Code section 232.102(4) (1987). The statute provides:

4. 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.

As always, central to our determination of this matter is the best interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has a duty to see that every child receives minimally adequate

care and treatment and will intercede when parents abdicate their responsibility. Id. In making our determination, not only may we look at the past behavior of the parent, but it is an important factor. In Interest of M.H., 267 N.W.2d 275, 276 (Iowa App. 1985). We look at the children's long-range and immediate interests and consider what the future could hold for the child if returned to the home. Id. We may obtain insight to this determination from the evidence of the past performance, for that behavior may be indicative to the quality of the future care the parent is capable of providing. Interest of Dameron, 306 N.W.2d at 745. Iowa statutory CHINA provisions have been construed as preventative as well as remedial and thus require our action to prevent possible harm to a child before harm may occur. Id.

Our close scrutiny of the record convinces us the State has shown by clear and convincing evidence the child, at the present time and in the future, will be better served if his physical custody is placed with the natural father. In short, we determine the juvenile court had sufficient evidence in this record to modify the child's physical custody by placing him with the natural father.

The natural mother's husband suffers from an ongoing problem which leads him to engage in inappropriate sexual activity with children. During this dispositional hearing, three sexual abuse reports were presented which dealt with

the husband either sexually abusing or involving himself in inappropriate sexual activity with the natural mother's children, including J.G. These reports, filed during 1987, also included allegations of some sexual activity by the husband toward neighborhood children. Psychological evaluations of the husband concluded he had problems controlling his sex drive, creating a tendency to act out in a sexually-inappropriate manner. The reports also concluded he creates a significant risk to his children, given his fantasies and the fact he had never participated in a program designed to address his sexual abuse propensities. Further, the psychiatric report recommended such a program should be undertaken before any of the children are returned to his home. In addition, evidence indicated the natural mother was incapable of protecting the children in the home.

These factors, considered together with evidence the natural father can offer an adequate home setting, lead us to conclude sufficient evidence existed for the juvenile court to modify J.G.'s placement pursuant to section 232.102(4).

II.

In its dispositional order the juvenile court ordered that no contact should exist between J.G. and the natural mother's husband. The order requires the stepfather not to have unsupervised contact with the children while giving

the natural mother unsupervised visitation. However, the obvious effect of this order is to deprive the natural mother of in-home visitation with J.G. We determine this restriction on visitation is proper. The evidence indicated the stepfather has had numerous incidents of sexual misconduct with the children and has not attempted to adequately address his problem. Added to this, the mother's inability to provide a safe environment for her children while visiting her home make it clear to us the juvenile referee's restrictions on visitation were correct.

AFFIRMED.