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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTERESTS OF P.W. and K.McL., Children.

Filed January 29, 1986

5-615
85-824

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Appeal from the Juvenile Court for Muscatine County - James Weaver, District Associate Judge.

This case involves the dismissal of a CHINA petition; the mother of the children and the court-appointed attorney for the children have both appealed from the juvenile court's order. **REVERSED AND REMANDED.**

Gerald F. Denning and Linda L. Allison of Allbee, Allison & Denning, Muscatine, Iowa, for the appellant mother.

Kathryn Egenberger, Muscatine, Iowa, for the appellant children.

John Wunder, Muscatine Legal Services, Muscatine, Iowa, for the appellee father.

S. J. Petersen, Muscatine County Attorney, and Bruce Ingham, Assistant Muscatine County Attorney, for the State.

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

This case involves the dismissal of a CHINA petition. The mother of the children involved and the court-appointed attorney for the children have both appealed from the juvenile court's order. They contend there was clear and convincing evidence that the children were in need of assistance. Appellants also challenge several evidentiary rulings. We reverse and remand.

The children in question are stepsisters aged eleven and four. The girls have the same mother but different fathers. Both girls have been in their mother's custody at all relevant times.

In January 1985 the mother reported to social service workers that she believed both girls had been sexually abused by her former husband, the father of the younger girl and the stepfather of the older girl. The State then filed a petition asking that the children be declared children in need of assistance. However, the juvenile court dismissed the State's petition. The juvenile court concluded that the allegations of sexual abuse had not been established. The court found that the older girl's allegations of sexual abuse were not credible and that the younger girl's allegations had been influenced by the older girl's "manipulations."

On appeal, several evidentiary issues are raised. One concerns the admissibility of evidence of a private polygraph examination taken by the alleged abuser, Richard McLaughlin. Appellants claim that this evidence was inadmissible without stipulation of all the parties even though it was attached to the child abuse report. We agree.

The limited scientific reliability of polygraph examinations has caused our courts to place limits on the admissibility of polygraphic evidence. See, e.g., State v. Conner, 241 N.W.2d 447, 457-59 (Iowa 1977). The Iowa Supreme Court has consistently held that the results of a polygraph test may be admitted

into evidence only by stipulation of the parties. State v. Losee, 354 N.W.2d 239, 242 (Iowa 1984); State v. Marti, 290 N.W.2d 570, 586 (Iowa 1980); Conner, 241 N.W.2d at 457.

In the present case, the rule excluding unstipulated polygraph evidence has been violated. The fact that the evidence was attached to the chapter 235A Child Abuse Report as "additional information" does not change this result. The polygraph was prepared at the request of and for the use of McLaughlin's attorney. It was attached to the child abuse report at the request of the appellee's attorney almost three weeks after the report was made. As we see it, the mere fact that the polygraph evidence was attached to an admissible report does not give the evidence any more credibility; nor does it except the evidence from the rule excluding unstipulated polygraph evidence.

We therefore conclude that the juvenile court erred in admitting evidence concerning McLaughlin's polygraph. The question remains, however, whether this constitutes reversible error. The appellee claims that the error is harmless citing to the following statement made by the juvenile court:

> In addition to the lack of evidence supporting the allegation, Richard's denial of having ever touched his daughter in a sexual way is credible, corroborated to some extent by the polygraph examination. To clarify the weight given to the polygraph, the Court would believe the denial in the absence of the polygraph in light of the other evidence, but it does consider the consistencies in the answers and the opinion of the examiner to assist it in assessing Richard's credibility.

This statement does not convince us that the admission of the polygraph evidence was harmless. In proceedings of this type, a court's credibility determination concerning witnesses is often the crucial, if not dispositive factor. Consequently, when improperly admitted evidence bears directly on the issue of credibility, it is very difficult to alleviate the resulting prejudice. It would certainly be an exceptional circumstance when a witness's credibility is so clear

that corroborating polygraph evidence could be considered to have minimal weight or persuasiveness. This is not one of those exceptional cases.

Simply stated, in the present case the children alleged sexual abuse and McLaughlin denied it. To the extent that the polygraph evidence made McLaughlin's testimony more believable, it must be viewed as highly prejudicial. In this type of situation, the best interests of the children require a new hearing.

Since evidence was improperly admitted, we reverse and remand for a new hearing consistent with this opinion. Because of our disposition on this issue, we find it unnecessary to address the remainder of appellant's claims.

REVERSED AND REMANDED.