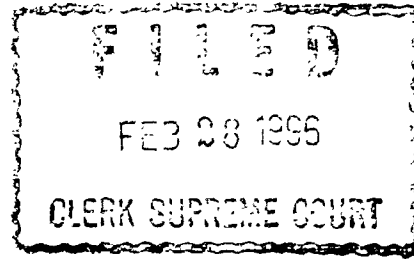


IN THE COURT OF APPEALS OF IOWA

No. 5-638 / 95-1023

IN THE INTEREST OF N.C., A Minor Child,
L.C. and T.C., Parents,
Appellants.



Appeal from the Iowa District Court for Delaware County, Jane Mylrea,
Associate Juvenile Judge.

Parents appeal from an order finding their son is a child in need of assistance
and placing him in a residential treatment facility. **REVERSED AND DISMISSED.**

Stephanie C. Hassler of Lansing Law Office, Dyersville, for appellants.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, ~~and~~ Charles K. Phillips, Assistant Attorney General, for appellee State.

Daniel H. Swift of Swift & Swift, Manchester, for minor child.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

This appeal focuses on the question of when the State can override the decisions of loving and caring parents as to the mental health treatment of their children.

Nathan, born in 1982, is the child of Leo and Theresa. Leo and Theresa have five other children, but only Nathan is the subject of this case.

Nathan was found to be a child in need of assistance on the ground he was in need of treatment for mental illness, and his parents were unwilling or unable to provide such treatment. The juvenile court ordered Nathan placed in a residential treatment facility. Leo and Theresa appeal contending (1) Nathan is not a child in need of assistance, and (2) Nathan should not have been ordered placed in Tanager Place when they wanted to keep him at home.

In February 1993, Leo and Theresa contacted the Department of Human Services for help in dealing with Nathan. Nathan had a history of aggressive behavior. Nathan destroyed doors in the family home and punched holes in the walls. He would throw things at family members when he became upset. Leo and Theresa were of the opinion Nathan exhibited aggressive behavior when they tried to limit his conduct and he controlled the family by throwing a temper tantrum when he did not get his way.

Nathan was diagnosed as having an intermittent explosive disorder, a conduct disorder, an oppositional defiant disorder, and a history of attention deficit disorder. Nathan was placed on medication. He received counseling from the Delaware County

Mental Health Center. At times, Nathan refused to go to the counseling sessions. Leo and Theresa counseled at the same center. Also, a social worker with Lutheran Social Services met with the family in their home twice a week.

In early 1995, Nathan's behavior became worse. He refused to go to school. Leo attempted to confront Nathan, and he would drive Leo to tears. Once after an argument with Nathan, Leo, who suffers from depression, made an aborted suicide attempt. When Theresa told Nathan she was going to take him to school, Nathan threw hot coffee at her. Neither parent was able to get Nathan to attend school.

Nathan also refused to continue counseling at the County Mental Health Center. He jerked the telephone cord out of the wall several times to prevent his parents from reporting his aggressive behavior to the Department of Human Services. Nathan threw a knife at Leo. Leo and Theresa requested that Nathan be placed in a residential facility.

On April 17, 1995, the State filed a petition to have Nathan found a child in need of assistance under Iowa Code sections 232.2(6)(f) and 232.2(6)(k).

On ~~April~~ April 18, 1995, Nathan was told he was going to live at Tanager Place. He was resistant ~~to~~ the idea. Nathan threatened to hurt himself with a knife and then ran away. His parents found him and he was taken to St. Luke's Hospital in Cedar Rapids. Nathan stayed at St. Luke's for nine days. His medication was adjusted and his behavior improved. While Nathan was at St. Luke's, his parents changed their

minds about placing him in a residential facility and told the Department of Human Services they wanted him returned to their home.

A doctor who treated Nathan at St. Luke's recommended residential treatment because of his aggressive behavior. The doctor felt placement in a residential treatment center would allow Nathan to work on behavior problems. A social worker with the Department of Human Services concluded Nathan required treatment and structure that only a residential treatment program could provide.

A dispositional hearing was held on May 15, 1995. The parents' counselor at the County Mental Health Center testified Leo and Theresa had difficulty making rules and enforcing them consistently. She gave the opinion this allowed Nathan to continue displaying inappropriate behavior. Nathan's counselor at the County Mental Health Center testified he believed Nathan needed treatment in a residential treatment center or his behavior would get worse. Nathan's counselor had not seen Nathan since his hospitalization. The worker from Lutheran Social Services testified Nathan's conduct needed to be brought under control and questioned whether his parents had the ability to do this.

~~Theresa~~ testified in the three weeks since Nathan had returned from St. Luke's they had no problem with him. She said Nathan was expected to remain at Tanager Place for three to six months, and she believed this was too long for him to be away from home. She recognized Nathan's temper could flare up if he remained at home

and said, if this happened, she would take him in for counseling at the County Mental Health Center.

Leo testified he felt Nathan would not be aggressive if he knew he could be sent to Tanager Place as a consequence.

The juvenile court found Nathan was a child in need of assistance pursuant to section 232.2(6)(f), as he was a child in need of treatment to cure or alleviate serious mental illness or disorder, including untoward aggressive behavior toward others, and whose parents, although primarily cooperative with services, had been unable to regulate and provide the appropriate treatment for the child. The court found the parents had received services for two and one-half years, but they were still unable to control Nathan's behavior. The court concluded Nathan should be placed in residential treatment at Tanager Place.

We review de novo. *In re B.B.*, 500 N.W.2d 9, 11 (Iowa 1993). We review the facts and the law, and adjudicate anew the issues properly presented on appeal. *In re L.G.*, 532 N.W.2d 478, 480 (Iowa App. 1995). We give weight to the fact findings of the juvenile court, especially those regarding the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Leo and Theresa contend the juvenile court should not have found Nathan was a child in need of assistance. They concede Nathan needs treatment to cure or alleviate a serious mental illness. They dispute the juvenile court's finding they are

unable or unwilling to provide treatment when, in fact, they have provided treatment for Nathan by seeking assistance from the Department of Human Services, enrolling him in counseling, getting prescriptions for medication, and committing him for in-patient treatment.

The State has the burden of proving the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96. Clear and convincing evidence is more than a preponderance of the evidence and less than evidence beyond a reasonable doubt. *L.G.*, 532 N.W.2d at 481. It means there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence. *Id.*

The petition alleged Nathan was a child in need of assistance under section 232.2(6)(f), which provides a child in need of assistance means a child:

Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

Iowa Code § 232.2(6)(f) (1995).

Leo ~~and~~ Theresa argue they have and will see Nathan has treatment. We find them loving ~~and~~ caring parents who have sought assistance for their child's mental and behavior problems. They do not agree Nathan be put in Tanager Place. They believe the adjustment in Nathan's medication and his moderated behavior in the three weeks since his release indicate residential care is not called for at this time.

Leo and Theresa testified, if Nathan became aggressive in the future, they would take him to counseling and they felt Nathan would not be aggressive because of the threat of placement in Tanager Place.

Nathan suffers a mental illness, but there is not clear and convincing evidence Leo and Theresa are either unwilling or unable to provide treatment. A review of the record of the history of these parents' attempts to help Nathan reflects the contrary.

The only real question is whether their decision Nathan stay home where he is progressing with a change of medication when the doctor and several providers recommend Tanager Place is clear and convincing evidence meeting the requirement of the statute.

The doctor in his discharge summary says:

The patient will continue on Tegretol 250 mg bid and imipramine 125 mg qhs. He will follow up with me at the Manchester Mental Health Clinic in a couple of weeks. I am recommending strongly that the patient be placed in the residential treatment center to work on behavior problems independent of his primary diagnoses of ADHD and overanxious disorder of childhood. The patient will follow up with Dr. LaMorgese to continue monitoring his AVM. This will be done as an outpatient.

~~The doctor~~ The doctor's recommendation for residential care is for behavior problems.

Medications are being given and monitored on an outpatient basis by his parents.

There is not clear and convincing evidence supporting the juvenile court's findings. We reverse and dismiss.

We do not make a determination whether or not Nathan should be institutionalized. We only decide the evidence does not reach the necessary level to remove this decision from Leo and Theresa's hands.

REVERSED AND DISMISSED.