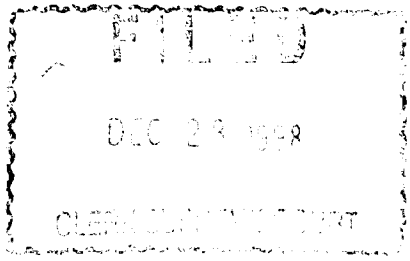
IN THE COURT OF APPEALS OF IOWA

No. 8-573 / 97-2309
Filed December 28, 1998

IN THE MATTER OF THE GUARDIANSHIP OF SHAYNA LYNN COOPER, Minor Child,

THOMAS L. SCHLEIMER,
Appellant,
vs.

LEO M. COOPER and JANICE COOPER,
Appellees.



Appeal from the Iowa District Court for Sac County, Joel E. Swanson, Judge.

Thomas Schleimer appeals a district court order granting custody and guardianship of his daughter, Shayna, to her maternal grandparents, Leo and Janice Cooper. **AFFIRMED.**

Stephen M. Engelhardt, until withdrawal, and then Eric Borseth of Borseth & Genest, Pleasant Hill, for appellant.

Reed H. Reitz of Reimer, Lohman & Reitz, Denison, for appellees.

Heard by Sackett, C.J., Huitink, J., and McCartney, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, J.

I. Background Facts and Proceedings.

Shayna Cooper's maternal grandparents initiated guardianship proceedings seeking her custody following the death of her mother, Mary Cooper. Thomas Schleimer, Shayna's father, responded with a separate action claiming paternity and custody of Shayna. The parties' custodial claims were subsequently consolidated for trial.

Tom and Mary's relationship began in 1987. They began living together in 1989. Shayna was born on September 26, 1991.

Mary was diagnosed with cancer in 1994. In January 1996, Mary learned her illness was terminal. At that time, she left Tom and moved in with her parents, Leo and Janice Cooper. Shayna was living with Mary and her grandparents when Mary died in September 1996.

These proceedings followed the Coopers' refusal to accede to Tom's demands for custody of Shayna. Although Tom's paternity was not disputed, the Coopers claimed Tom was not a suitable custodian. At trial, they offered evidence Tom was an abusive alcoholic who abdicated parental responsibilities when Mary and Shayna most needed his financial and emotional support.

Tom premised his custodial claims on the strong presumption a surviving parent enjoys in these circumstances. He disputed the Coopers' claims of unsuitability citing participation in Alcoholics Anonymous (AA) and the fact that his

abusive behavior predated Shayna's birth. Tom attributed his diminished parental role from January through September 1996 to the Coopers' ill feelings towards him and interference with his efforts to visit Shayna.

Tom sought to bolster his claims by calling multiple witnesses to describe his successful AA experience. These witnesses were excluded because the district court found their testimony was cumulative of other evidence sufficient to establish this proposition.

The district court concluded Tom was not a suitable custodian for Shayna. The Coopers were named as Shayna's guardians. The court determined Tom was Shayna's father and ordered him to pay the Coopers $150 per month toward her support. The parties stipulated as to Tom's visitation schedule.

Tom appeals. He contends the district court erred in naming the Coopers as Shayna's guardians. He argues the court should have made a finding he was an unfit parent before naming the Coopers as guardians. He also asserts the district court erred in excluding all witnesses except the parties involved. He contends the court could not properly make the determination he was an unfit parent until it had heard from witnesses who knew him and the progress he had made toward sobriety.

II. Standard of Review.

A petition for appointment of a guardian and custody of a minor child is tried in equity. Therefore our review is de novo. *In re Guardianship of Knell*, 537 N.W.2d 778, 780 (Iowa 1995). We give weight to the findings of the trial court, especially

when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

A trial court's ruling on evidentiary matters is discretionary. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992). We will reverse an evidentiary ruling only when a trial court is shown to have abused its discretion. *Id.* In order to show an abuse of discretion, one generally must show that the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976).

III. Evidentiary Issues.

Tom asserts the district court erred in excluding all witnesses except the parties involved. He contends the court could not properly make the determination he was an unfit parent until it had heard from witnesses who knew him and the progress he had made toward sobriety. We disagree.

District court judges have the authority to impose limitations upon the number of witnesses, and to control their examination. *See* Iowa R. Evid. 403, 611. *See also* 75 Am. Jur.2d *Trials*, § 88 (1994). Iowa Rule of Evidence 403 provides for the exclusion of even relevant evidence in the interests of avoiding "undue delay, waste of time, or needless presentation of cumulative evidence." Likewise, Iowa Rule of Evidence 611(a) provides the trial judge the power to "exercise reasonable control over the mode and order of . . . presenting evidence so as to . . . avoid needless consumption of time."

The district court addressed the parties prior to trial and informed them it was limiting the testimony to that coming from the parties themselves. The court's rationale was that all of Tom's witnesses were to testify as to the same subject matter as he himself would testify: his involvement in Alcoholics Anonymous. The district court noted it was willing to accept the fact Tom was actively involved in AA, and therefore the other witnesses would merely be testifying to cumulative matters.

We find the district court did not abuse its discretion in limiting the number of witnesses allowed to testify. The court was well within its discretion in limiting the presentation of testimony in the interests of preservation of judicial time and avoiding the needless presentation of cumulative evidence.

IV. The Merits.

"The parents of [a] minor [child], if qualified and suitable, are preferred over all others for appointment as their guardians." *In re Guardianship of Stodden*, 569 N.W.2d 621 (Iowa App. 1997)(citing Iowa Code § 633.559). The law raises a strong presumption that the child's welfare will be best served in the care and control of its natural parents. *Northland v. Starr*, 581 N.W.2d 210, 212 (Iowa App. 1998). "This presumption is essential to the maintenance of society, for without it, man would be denaturalized, the ties of family broken, the instincts of humanity stifled, and one of the strongest incentives to the propagation and continuance of the human race destroyed." *Id.; Zvorak v. Beireis*, 519 N.W.2d 87, 88 (Iowa 1994)(quoting *Risting v. Sparboe*, 179 Iowa 1133, 1136-39, 162 N.W. 592 (1917)).

Iowa courts have frequently decided disputes in which persons who have cared for the children of another have attempted to retain custody against the wishes of the natural parent. *Northland*, 581 N.W.2d at 212 (citing, *e.g.*, *In re Sams*, 256 N.W.2d 570 (Iowa 1977); *Doan Thi Hoang Anh v. Nelson*, 245 N.W.2d 511 (Iowa 1976); *Hulbert v. Hines*, 178 N.W.2d 354 (Iowa 1970); *Garvin v. Garvin*, 260 Iowa 1082, 152 N.W.2d 206 (1967); *Halstead v. Halstead*, 259 Iowa 526, 144 N.W.2d 861 (1966); *Alingh v. Alingh*, 259 Iowa 219, 144 N.W.2d 134 (1966)). As in all child custody cases, the determining factor is the best interests of the child. *In re Stodden*, 569 N.W.2d at 623. The determination of a child's best interests, however, must take into account the strong societal interest in preserving the natural parent-child relationship. *Zvorak*, 519 N.W.2d at 89. The parents of minor children if qualified and suitable are preferred over all others for appointment as their guardians. *Id.;* Iowa Code § 633.559 (1993). Recognition that the nonparental party is an excellent parent to the child will rarely be strong enough to interfere with the natural rights of the parent. *Zvorak*, 519 N.W.2d at 89. In applying these principles, we have acted in some cases to remove children from conscientious, well-intentioned custodians with a history of providing good care to the children and placed them with a natural parent. *Id.*

The presumption of preference in favor of a natural parent is rebuttable. *Knell*, 537 N.W.2d at 781. The burden of proof rests with the nonparent to rebut the presumption favoring the parent by establishing the parent is not a suitable parent and

the child's best interests require that he remain in the nonparent's care. *See id.* In considering the child's best interests, not only are the child's immediate interests considered, but the long-term interests. *In re Guardianship of Sams*, 256 N.W.2d 570, 573 (Iowa 1977).

The parties competing custodial claims must be considered in the context of Shayna's unfortunate situation. Shayna's mother died when she was six years old. While we are not qualified to measure the psychological implications of this event, Shayna's need for continuing intimate emotional support cannot be reasonably disputed. Despite the circumstances, the record indicates Tom abdicated his parental duties leaving the Coopers to provide for Mary and Shayna's financial and emotional support from January 1996 until Mary died. Although Tom blames his absence on the Coopers' disdain for him, there is equally credible evidence that he lacked the courage and emotional maturity to cope with the extraordinary demands resulting from Mary's illness and untimely death. The simple fact of the matter is the Coopers were there to support Shayna through this ordeal when Tom was not.

Additionally, the record indicates Tom's interest in parenting Shayna is no more than subjective. For most of Shayna's life, Tom relied on others to attend to her primary care needs. While we do not doubt his sincerity, the absence of significant primary care experience raises serious doubts about Tom's competence to attend to the most fundamental of Shayna's primary care needs.

Lastly, we note the absence of any evidence suggesting the Coopers are unable to care for Shayna. They have provided for her subsistence when Tom declined to and as indicated earlier, have been the sole source of her emotional support through these very trying circumstances. Although their relationship with Tom is strained, they have accommodated Tom's interests in Shayna by agreeing to a reasonable visitation schedule.

We conclude that the Coopers have met their heavy burden of proof. The record clearly demonstrates Tom is not a suitable custodian for Shayna and it is in her best interests to remain in the custody of her grandparents, Leo and Janice Cooper. The judgment of the district court is affirmed.

AFFIRMED.