IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF)	
W.G., S.G., D.G., W.G., K.G., J.G.,)	
and N.G., Children,)	
J.G. and P.G., Natural Parents,)	
Appellants.)	
vs.)	3-361 83-554
STATE OF IOWA)	
Appellee.)	

FILED
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CLERK SUPREME COURT

Appeal from Pottawattamie District Court - Gordon C. Abel, Judge.

The natural parents of seven children appeal from the termination of their parental rights. REVERSED AND REMANDED.

Gregory L. Waggoner, Waggoner & Walter, Council Bluffs, Iowa, for appellant, J.G..

Gary K. Anderson, Anderson & Wheeler, Council Bluffs, Iowa, for appellant, P.G.

James M. Harvey and E.A. Westfall, Assistant County Attorneys, for appellee.

A.W. Tauke, Porter, Lash, Reilly & Tauke, Council Bluffs, Iowa, guardian ad litem for the children.

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

SACKETT, J.

J.G. and P.G. appeal from a trial court decree terminating the parent-child relationship between themselves and seven of their minor children. The trial court found: that the children had been adjudicated children in need of assistance; that custody of the children had been transferred from their parents for twelve months; that there was clear and convincing evidence the children would suffer harm as a result of the failure and inability of their natural parents to exercise reasonable care in supervising them and to exercise minimum care in supplying them with adequate food, clothing and shelter. The parents, J.G. and P.G., assert that the state has failed to show by clear and convincing evidence that the children cannot be returned to their custody, and that the state failed to establish that the children had been physically abused or that they would be physically abused in the event they were returned to their parents. We reverse and remand.

J.G. and P.G. were married in 1968. P.G., the mother, was born in 1942. Prior to her marriage, she had graduated from an Iowa college with a degree in home economics and elementary education. She taught for seven years in the Milwaukee, Wisconsin, schools and worked for Children Service Society of Wisconsin as a case aide worker. She quit teaching when the oldest children (twins) were born. Since that time, she has involved herself in the family farm operation. J.G., the father, was born in 1935. He had served in the army.

Before the couple's marriage, they purchased a farm near Watertown, Wisconsin. The farm was 107 acres with 25 acres of pasture. It is on this farm that the couple is still living. P.G. moved to Iowa at some periods as will be discussed later, but J.G. has lived on the farm at all times since the marriage.

Nine children were born to the marriage. Seven of the children, namely: W. and S., twins born April 7, 1972; D., born June 10, 1974; W., born August 19, 1975; K., born September 21, 1976; J., born July 22, 1978; and N., born August 6, 1979,

were the subject matter of this action. An eighth child died as an infant and a ninth child, M., born August 6, 1981, is in foster care.

P.G. and J.G. lived with their children on the Wisconsin farm until December of 1980 when P.G. moved with the children to Iowa.

The life-style of the family on the farm in Wisconsin has been described by the parties and their attorneys as a self-sustaining life-style. The family lived in a house where the only indoor plumbing was a cold water faucet in the kitchen. The source of heat was a potbellied wood-burning stove in the downstairs. The family slept in unheated bedrooms on the second floor. The food the family ate was, for the most part, what they raised on the farm. The family had a large garden and raised cattle and fowl. The children drank raw milk from the family cow. The children bathed every week or every other week. The family's way of life was more indicative of the life of a farm family at the beginning of this century than life in the 1980's.

J.G. had an authoritative attitude towards his wife and children; of the traditional Catholic faith, he believed in individual freedoms. He felt his wife and children should work hard on the farm. He was a proud man whose occupation was running the small farm and repairing machinery for other persons. It appears that he had little money, but he was against his family using food stamps. He shunned medical care. Six of the children were born at home. A Wisconsin doctor, however, examining the children on December 29, 1980, found P.G. and the children to be basically healthy and to have done well despite being uninvolved with medical care.

J.G. believes in corporal punishment. He beat the children with a belt and switch. He believed that punishment had to hurt to be effective. His beatings left some marks or welts. There is no evidence of the severity of the welts and no medical evidence of abuse. The children were fearful of his punishments.

The Human Service Agency of Wisconsin became involved with the family in April of 1979. A request had come from P.G. She and J.G. were experiencing marital difficulties. P.G. complained of physical and emotional abuse and inadequate living conditions on the family farm. Notes from Human Services of Wisconsin indicated they visited the home. They were concerned about the plumbing, the heat sources, and the sleeping conditions of the children. One child was put in foster care for a period.

P.G. again contacted Human Services of Wisconsin about her concerns. On December 23, 1980, they assisted P.G. in relocating in Council Bluffs, Iowa, where P.G.'s parents lived. The children were adjudicated children in need of assistance in Pottawattamie County on March 4, 1981. The court, in making the adjudication, found that P.G. had been a slave to her husband; that P.G. was beaten; and that the children lived in poverty, subsisting on food raised on the farm. The children had no medical attention. The court concluded that it had been shown by clear and convincing evidence that the children were abused and neglected. The children were placed under the care, custody and control of Social Services and placed in P.G's custody provided: that P.G. and the children received psychological and psychiatric evaluation; that the children not be removed from the county; and that the natural father have no visitation without court approval. On dispositional hearing, the Social Service's custody, care and control was continued, as was the placement with P.G.. This placement was conditioned on requirements similar to those of the prior ruling. In addition, P.G. was to attend individual counseling sessions, she was to participate in the S.T.E.P. program, and letters from J.G. were to be screened by Social Services. J.G. did not appear at either hearing. There were 96 pages of letters written by him to various persons and agencies entered as exhibits. P.G. testified at the termination hearing that she agreed to the juvenile court's intercession because she believed it

would allow her to keep the children because J.G. wanted them as much as she did.

In February, 1981, all the children were checked by John A. George, M.D. The doctor's notes indicated that the children were well and within normal range. K.G. had an ear problem. The foster mother testified that, when she received the children on April 26, 1981, they had pinworms. After a week of treatment, the pinworms were gone. We give little credence to this evidence in lieu of the February, 1981 medical examination and a written report from D. Griffin of Catholic Social Services that the children were treated for pinworms in October of that year. On March 4, 1981, the children were given a complete dental exam. They were found to be in good oral health. One child needed minor restorative care, which was done. On March 16, 1983, P.G. and the children were evaluated at River Bluffs Community Health Center. Psychiatric notes and psychological evaluations indicated that the children were well-nourished and within normal range. Several of the children did show some anxiety.

On April 21, 1981, P.G., six months pregnant with M.G., left to return to Wisconsin. She wanted to work on her marriage. P.G. requested foster placement for the children. On April 26, 1981, the children were placed in the foster home where they resided at time of trial.

Infant M.G. (not involved in these proceedings) was born in Wisconsin on August 10, 1981. A petition was filed in Pottawattamie County finding the unborn child to be in need of assistance. There followed intensive therapy, individual counseling, and support groups for P.G. and J.G. P.G. wanted to stay with J.G. without court involvement. The adjudication hearing with respect to M.G. placed certain conditions on P.G. which she was required to meet before she could return to the family farm. When those conditions were not met, P.G. returned to her parents' home in Council Bluffs.

On August 17, 1981, P.G. met with social workers to regain custody of the seven children. P.G. appeared angry when their return was not immediate. Social Services encouraged P.G. to obtain employment. She resisted because of her desire to be available to care for her seven children. A report of the deputy probation officer indicated, in October of 1981, that an attempt was made to re-establish P.G.'s relationship with the children. No details of what efforts were made were given in the report. P.G. testified at the termination hearing that she became frustrated in her attempts to visit with the children following her return from Wisconsin after M.G.'s birth. Her letters and cards to the children were censored. She was not allowed to phone the children. She was not told where the children were. She was denied requested visitation.

In October, P.G. complied with the case plan and received therapy services at St. Joseph Hospital. In November she obtained an apartment. She was torn between re-establishing a relationship with her husband and regaining her children. On November 13, 1981, P.G. put M.G. in foster care. On November 22, 1981, she told the children she was returning to Wisconsin. On December 16, 1981, she did return to Wisconsin to work out her problems with J.G. P.G. and J.G. returned to Iowa briefly but were not allowed to see the children because the time they were in Iowa was too short.

At the time of the termination hearing, the parties' requests to see the children were met with resistance from the probation officer. The parents did have supervised visitation for a relatively short period (about 55 minutes) after the court intervened. The visitation supervisor reported to the court. The report of the visitation was favorable.

I.

The issue presented is whether there was clear and convincing evidence that the children should not be returned to their parents. We believe there was not.

Our review of proceedings to terminate a parent-child relationship is de novo. In re Goettsche, 311 N.W. 2d 104, 106 (Iowa 1981). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those findings. In re Chad, 319 N.W. 2d 213, 216 (Iowa 1982).

This is a de novo review. Iowa R. App. P. 4. We need not separately consider errors made by the trial court in its findings. In re Voeltz, 271 N.W. 2d 719, 722 (Iowa 1978). We do not reverse an equity case upon such complaints as these but draw such conclusions from our review as we deem proper. Id.

Before a state may sever completely and irrevocably the rights of parents in their natural children, they must support their allegations by clear and convincing evidence. Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L.Ed. 2d 599, 617 (1982). The rights to conceive and to raise one's children have been deemed "essential," "basic civil rights of man,", and "rights far more precious than property rights." Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208,1212, 31 L.Ed. 2d 551, 558 (1972).

While there is a presumption that the best interest of the child will be served by leaving it with its parents, this is not conclusive. The state, as parens patriae, has the duty to see that every child within its borders receives proper care and treatment. In re McDonald, 201 N.W.2d 447, 453 (Iowa 1972).

Central to these determinations is the best interest of the child. In Interest of T.D.C., 336 N.W. 2d 738, 740 (Iowa 1983). In this connection, we examine the child's long-range as well as immediate interests. We consider what the future would hold for the children if returned to their parent. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Parents and children share an interest in avoiding erroneous termination. Santosky v.Kramer, 455 U.S. 745, 765, 71 L.E.d 2d 599, 614, 102 S. Ct. 1388,1400 (1982).

Today, P.G. and J.G. live on their Wisconsin farm. Their marital relationship has improved. They indicate a deep commitment to their marriage vows. Their financial situation has improved. They have done some remodeling to the home. Their home still does not have indoor plumbing. J.G. has not changed his views, although his testimony does indicate he has become more supportive of his wife. He and P.G. have submitted to counseling, but because of his strong opinions, he is not easily counseled. P.G. and J.G. are not now participating in a counseling program. J.G. has done nothing to harm the children physically in any way since they left the farm. He has made rare visits to Iowa to see the children. He did not, however, bring the children to Iowa. The court proceedings in Iowa limited his access to his children. His home is a ten-hour drive from Council Bluffs. He was a man of limited means. He was not informed of the whereabouts of his children. His letters to his children were censored.

The state has failed to show that the current actions of the parents support termination. The only evidence we have of current living conditions is the testimony of the parents themselves. We are bound, however, to look at past actions of the parents to determine whether those actions indicate they are unable to "care for children".

There are allegations of failure to provide adequate food, clothing and shelter. Any allegations of inadequate food are refuted by the medical evidence which shows the children to be normal and in some instances well-nourished. The fact that of seven children only one needed dental care is very remarkable. There is no evidence of inadequate clothing. The shelter the children had in Wisconsin was sub-standard. While indoor plumbing is a normal convenience in most homes, we would never say it is necessary for good parenting. We need not look back many generations to find ancestors raised successfully in a similar environment. The number of baths children take should remain in the discretion of the parent absent a showing of a health hazard.

We have little evidence that the children were physically disadvantaged. A medical exam on December 29, 1980 by a Wisconsin doctor found basically well children. Two had an ear problem and two had a minor foot problem. The doctor found they had done well in spite of never having received medical care. We are faced with differing views of how much health care is necessary. Absent a showing of harm, the number of visits children make to doctors remains an individual decision. We are not going to terminate parental rights because parents believe in minimal doctor's care for healthy children.

The parents believe that their parental rights are being terminated because of their self-sustaining life-style and argue that their rights should not be terminated for this reason. While we recognize that the record before us contains factors other than life-style that were considered by the court in the termination matter, we agree that a self-sustaining life-style does not justify termination.

The issue of physical abuse of the children is more troublesome. We are aware that the children were punished with belts and switches. J.G. has admitted to inflicting such punishment. The courts have long recognized that parents have the right to use some physical force in disciplining their children. Whether a parent who inflicts corporal punishment on a child is acting in good faith, prompted by parental love, without passion, is a matter to be determined largely from the character of the injuries received by the child. State v. Washington, 104 La. 443, 29 So. 55 (1901).

In 1862, the Iowa Supreme Court found that an information charging a father with cruelly and inhumanely whipping and beating his three-year-old child was sufficient to charge the offense of assault and battery. State v. Bitman, 13 Iowa 485 (1862). In In re Herron, 212 N.W.2d 474, 476-77 (Iowa 1973), the court found abuse where neighbors and school personnel testified to instances of harsh, severe and unusual disciplinary measures. The issue of whether or not such behavior supported termination was not reached in that case because of the absence of notice. Id. at 477.

P.G. testified that J.G. did hit the children on the buttocks with a belt, resulting, on occasion, in a welt. She considered a welt a red mark. The skin was never broken. Sometimes, but not very often, the red mark was raised. The state contends that this is sufficient to show "non-accidental physical injury." They give us no authority. We disagree that the evidence supports termination.

There are statements made by the children to the foster mother that were allowed into evidence which indicated the children had been beaten. While these statements did come into evidence, we have given these statements very little weight. They were statements made by young children more than 12 months after any alleged beating. The children had not seen their father. They had been with their mother when she was upset with their father. There, understandably, were conversations about problems in Wisconsin. Whether these statements are from memory or things heard, we cannot determine.

We do not intend by this opinion to condone beatings nor do we contend that parents have the right to abuse their children by punishment.

The supreme court said in In re Freund, 216 N.W. 2d 366, 369 (Iowa 1974) (quoting 59 Am. Jur. 2d, Parent and Child, section 40, pages 126 and 127):

> That a parent has once been guilty of misconduct or even child neglect, is not alone sufficient to deprive him of the custody of his child, where there is nothing to show he is not presently a fit and capable custodian for the child.

II.

The state alleges that the crux of the state's case was that, during the rehabilitation period between CHINA disposition and the termination hearing, the parents made little or no progress to improve the acts or conditions leading to the original CHINA adjudication of the children.

The parents agree with the state's assessment that the progress of the parents during the interim between the finding of Child In Need of Assistance and the termination hearing is the crux of the matter, but contend that the evidence

refutes the state's contention that little or no progress was made. Section 232.102(1)(5) of the Iowa Code (1981) provides in reference to dispositional hearings on transfer of legal custody to the department as follows:

> If the court orders the transfer of the custody of the child to the department of social services or other agency for placement, the department or agency shall submit to the court a specific plan for placement of the child and shall make every effort to return the child to his or her home as quickly as possible. [emphasis added].

There is little in the record to show that this effort was ever made. Unfortunately, the children were uprooted and brought a ten-hour drive from their family home. Visitations by J.G. were immediately restricted by court order. He was not to know where his family was. There were numerous efforts made to secrete and seclude P.G. and the children from J.G. J.G. found out where his wife and children were on several occasions, yet the record is devoid of evidence showing any abusive actions by J.G. outside his home towards his wife or children. His letters to his wife and children were also censored and restricted.

After P.G. put her children in foster care to return to P.G. to work on their relationship, she found restrictions placed on her visitation. P.G. sought Human Services help when she became burdened by family problems and the exhausting care requirements of seven small children. The only complaint made against her was that she should have protected her children from her husband. She was a good mother in the four months she lived with the children in Council Bluffs. Letters she wrote to the children appear in the record. They are beautiful letters from mother to child, yet these letters were censored because they might upset the children. The children here have been upset and they will be upset regardless of the outcome of this action. We are not naive enough to believe that foster care, termination and adoption will place a child in a fairy-tale existance where he will live happily ever after. We are not being critical of the foster parents. The foster parents have worked long and hard with these young children. They are to be commended for performing these difficult tasks.

In Santosky v. Kramer, 455 U.S. 754, 765, 102 S. Ct. 1388, 1400, 71 L.Ed. 2d 599 614 (1982)(footnote 15), the United States Supreme Court, in commenting on the assumption that termination of natural parents' rights will benefit the child, said as follows: "[t]his is a hazardous assumption at best. Even when a child's natural home is imperfect, permanent removal from that home will not necessarily improve his welfare." See, e.g., Wald, State Intervention on behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985, 993 (1975) (under current practice, coercive intervention frequently results in placing a child in a more detrimental situation than he would be without intervention). "Indeed, because the child is already in agency custody, the state has the power to shape the historical events that form the basis for termination." Santosky v. Kramer, 455 U.S. 745, 765, 102 S. Ct. 1388, 1399, 71 L. Ed. 2d 599, 613 (1982).

We cannot condone, in a situation such as this, limiting contact between parents and children. We believe Social Services should not have done so. Their failure to allow parental contact is not in harmony with section 232.102(5). The entire plan here, if there was one, was to involve the parents in counseling. The parents went to counseling; perhaps not as much or as often as Human Services wished. But, again, we are not naive enough to believe that counseling solves all ills. No effort was made to return the children to their home as is required under section 232.102(5).

We will not, absent a strong showing of harm, condone a course of conduct which fails to implement a meaningful plan to continue the parent-child interaction, nor will we condone a situation where a parent who voluntarily seeks Social Services help is then isolated from her children once they are in foster care. Section 232.102(5) clearly demands more.

The order of the trial court terminating the parental rights of J.G. and P.G. shall be reversed. The matter is remanded to the juvenile court for a hearing and review of the placement. If it is determined that the placement should be

extended, the court shall determine what additional services are necessary to facilitate the return of the children to their home, and the court shall further order the provision of such services. We would encourage that immediate steps be taken to implement meaningful visits and reunite this family.

While we find no grounds for termination, P.G. and J.G. have not been without fault in these proceedings. They must, in the future, be supportive of one another and must further cooperate with Human Services to remedy any remaining problems.

REVERSED AND REMANDED.