IN THE COURT OF APPEALS OF IOWA

No. 1-284 / 91-248

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF L.F., B.F., P.F. AND S.F, Children, B.K. and A.K., Intervenors, and STATE OF IOWA,

Appellants.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

The foster parents who wish to adopt all four children have appealed from the juvenile court's permanency review order. The State has also appealed. The appellants argue the juvenile court abused its discretion by directing that siblings remain separated from each other without a compelling reason. **REVERSED AND REMANDED.**

Stephen W. Newport, Davenport, for intervenors-appellants.

Bonnie J. Campbell, Attorney General, John M. Parmeter and Charles K. Phillips, Assistant Attorneys General, for appellant State.

Steven A. Berger of Wehr, Berger, Lane & Stevens, Davenport, for appellees.

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

OXBERGER, C.J.

This case involves four children, a boy born in May 1985, a girl born in March 1987, and twin boys born in August 1988. The four children have the same mother. The twins have a different father from the older boy, while the older girl's father is apparently unknown. A fifth child Megan, age eight, is with her paternal grandparents and is not a part of this dispute.

The parental rights of the natural mother and all putative fathers were terminated in August 1990. That ruling is not challenged here.

All four children have been in foster care since 1989. Due to the size of the family unit, it was impossible to place all four of them in a single foster home. The twins have lived in the Russell home since October 1989, and the two older children have lived in the Kellenberger home since April 1990.

After the August 1990 termination order, the Russells expressed a desire to adopt the twins and the Kellenbergers expressed a desire to adopt all four children. The Department of Human Services favored placing the twins in the Kellenberger home, with the expectation that the Kellenbergers would eventually adopt all four children. However, the children's guardian ad litem obtained a juvenile court order blocking the removal of the twins from the Russell home.

In a January 1991 permanency review order, the juvenile court addressed the adoption question. The juvenile court directed that the twins be left in the Russell home and that the two older children be left in the Kellenberger home. The juvenile court contemplated that the Russells would petition to adopt the twins and that the Kellenbergers would petition to adopt the two older children. The court found that both families could provide good homes. In rejecting the Kellenbergers' desire to adopt all four children, the court found that the twins had bonded to the Russells and should not be removed from the Russell home.

Both the Kellenbergers and the State have appealed from the juvenile court's permanency review order. The appellants contend the juvenile court abused its discretion by directing that siblings remain separated from each other without a compelling reason. Both appellants argue that the continued separation of siblings is contrary to the children's best interest and is not supported by clear and convincing evidence of a need for separation. In addition, the Kellenbergers argue that the continued separation infringes on the children's "right of association" with their siblings; the Kellenbergers cite no constitutional or other authority for such a right of association.

SCOPE OF REVIEW: This case involves the review of a juvenile court order which changed guardianship from the Department of Human Services to the Russell family pursuant

to Iowa Code section 232.118. The Russells assert that the scope of review is at law. We disagree.

The supreme court in In re J.R., 315 N.W.2d 750, 752 (Iowa 1982), held the scope of appellate review of the issue of guardianship and custody of the child after termination of parental rights is de novo.

PLACEMENT OF THE CHILDREN: The issue in this case is whether the bonding of two of the children who were temporarily placed in the Russell foster home is such that the four siblings should be separated. There is no dispute the Russell home would be an adequate adoptive home for the two children. Nor is there any dispute the Kellenberger home would be a good adoptive home for the four children.

The issue facing us is whether the trauma of breaking the bond between the two children and the Russells is in the best interest of the four children. We shall review the evidence pertaining to the extent of the trauma expected if the bond between the Russells and the two children is broken.

Darin Larson, Bethany Home case manager, has had extensive involvement with the children. He said there was a strong sibling bonding between the two older children to the younger twins, but was not so sure the twins understood the brother/sister relationship. He recommended adoption of all four children by the Kellenbergers. He was asked, "How do you view the severity of that separation trauma (Russell). He said:

> Well, I think it depends on how we go about making that transition. Given that the twins are bonded to the Russells, I think that with their help and with their support, I think that transition could be made a lot less traumatic. Also since they're--have become quite familiar with Brandon and Leanna, who are already in the Kellenberger home, I see that as some stable grounds for the twins to identify with.

He further testified he felt the trauma of removal was outweighed by the benefits of reestablishing the sibling relationship. He doubted that the Russells would continue the sibling relationship if the Russells adopted the twins.

Pat Fennelly, the case manager for the Department of Human Services, recommended the four children be adopted by the Kellenbergers. She testified the Russells resisted sibling contact. She said the amount of trauma to be suffered by the twins if the four children are adopted by the Kellenbergers would depend on how supportive the Russells are in allowing the twins to move on. She believed the benefits of the reunification of the siblings outweighed the separation trauma.

Mollie O'Meara Conrad, a private licensed adoption investigator, was retained by the Department of Human Services to assist them in determining whether the children should be placed together or separated. She stated her opinion was that the four children be adopted by the Kellenbergers. She testified as follows concerning the trauma of removing the twins from the Russells:

> Well, obviously there is positives and negatives there. I think it's positive when children are

> able to attach. The chances of them attaching in another home are better. You have far more concern when you have children who have never attached anywhere. Then there is lots of red flags, these kids are very high risk of not attaching. Anyway, the fact they have attached is very good. Our concern, of course, is that because they are attached, moving is going to be difficult for them.

She further testified:

> I very specifically asked them that once all said and done and Steven and Patrick were in their home and Brandon and Leanna were in the Kellenberger home, would they be willing to have on-going visitation and they very strongly said no.

She further testified:

> And I don't feel that the Russells have the ability, at least from what I observed, to really tackle some of the adoption issues that need to happen within the family. The whole concept that I was hearing before about the kids being raised as Russells, that raises concerns for me because I hear them saying--they're denying the prior family. They're denying the children's connectedness and the children's history. And that's one thing that we know is very important for children who are adopted. They need to have their sense of understanding where they came from and who they were and why this is, and that doesn't matter whether they have had a good relationship in their adoptive home or not. They still have to sort that out. And that's best done when you have a family--an adoptive family who is sensitive and supportive of this and I don't see that. And things I've heard today have even further substantiated that for me.

She said the separation problems are outweighed by the long-term benefits of being with brothers and sisters. She also said the Russells were very closed to future sibling contacts.

Kim Callahan, adoption coordinator at Family Resources, testified as follows:

> There is no doubt in my mind there is going to be some impact (separation from Russell's foster home). I think for the first month for sure it's going to be real hard. For a couple months, probably, just a real uneasy feeling and confused feeling but I don't see it lasting much more than that. I really don't. Because of the kids' ages, I think that's also in their favor. And some of the behaviors they have shown before in the visits leads me to believe they're strong that way. They have proven that they have bonded with the Russells within a reasonably short period of time. I have no reason to believe that they would not bond with the Kellenbergers also. Again, having Brandon and Leanna there as their anchors would certainly facilitate that process for them.

Charles Hayes, a psychologist retained by the Russells to assess the level of attachment of the twins to them, testified the twins are bonded to the Russells. He said if the twins were removed it would be months before the disruption would subside. He said the Russells, if granted adoption of the twins, were only willing to grant infrequent sibling contact. He said he did not have any contact with the other two siblings nor the Kellenbergers.

Richard A. Hutchinson, a clinical psychologist, was asked by the Department of Human Services to evaluate the four children in January 1990. He said if the twins were separated from the Russells he would expect some regression, a lot of sadness, upsettness, perhaps reversion back to even more immature kinds of behaviors on their part, perhaps some difficulty in establishing another relationship with the parental figure. He observed the four children together for one hour. He interviewed them individually additionally.

He said he had concern for the Russells permitting future sibling relationship. He said that parent/child relationship was more important than sibling relationship. He said the twins saw the Russells as their parents.

The principle is well-established that siblings should not be separated without good and compelling reasons. In re L.L., 459 N.W.2d 489, 496 (Iowa 1990); In re J.W.D., 456 N.W.2d 214, 219 (Iowa 1990); In re A.M.S., 419 N.W.2d 723, 734 (Iowa 1988); Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977); In re S.V., 395 N.W.2d 666, 670 (Iowa App. 1986). In our de novo review of the evidence, we find the short-term disruption in the twins' lives will be offset by the long-term benefit of growing up with their siblings. We are also concerned that if the twins are adopted by the Russells there will be little or no sibling relationship.

We reverse and remand this matter to the trial court to enter an order granting the Kellenbergers adoption of the four children.

REVERSED AND REMANDED.