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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.M.L., A Child,	)	Filed November 20, 1984
STATE OF IOWA,	)	4-396 84-806
Appellant.	)	

Appeal from the Iowa District Court for Webster County - Mark S. Cady, District Associate Judge.

The State appeals from the juvenile court's dismissal of a CHINA petition. AFFIRMED.

Thomas J. Miller, Attorney General, and Charles Phillips, Assistant Attorney General, for appellant.

Blake Parker of Blake Parker Law Office, Fort Dodge, for appellees (parents).

Kurt T. Pittner, Fort Dodge, guardian ad litem.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

The State appeals from the juvenile court's dismissal of a CHINA petition. The State contends the juvenile court erred 1) by ruling that evidence did not support a finding of neglect, 2) in finding a single incident of neglect is not sufficient to sustain a child in need of assistance petition, 3) in prematurely concluding that the voluntary cooperation of the parents would continue, and 4) by refusing to enlarge the findings to include a subsequent juvenile court order involving J.M.L.'s three siblings. We affirm.

The child in question is a girl born in August 1983. In October 1983, she was hospitalized for poor weight gain and coughing problems. No specific diagnosis was made and no medications were prescribed. The treating physician, however, did prescribe a special formula.

On November 1, 1983, the child was examined by a physician for an ear infection. The physician prescribed antibiotics and the child's mother was advised of the problem and the need for medication. It was noted that the child was adjusting to the new formula. The mother neglected to fill the prescription and the child's father was never advised of the need for medication.

The child was examined again by the physician on November 11, 1983. At that time the doctor learned that no medication had been given. He testified that the child had only gained an ounce and a half in the intervening ten days. After this visit, the mother had the prescription filled and administered the medicine. Ten days after receiving the antibiotic, the child had gained approximately one pound, twelve ounces.

When the child was four months old, the State filed a petition asking that she be declared a child in need of assistance. The State relied primarily on evidence that the parents had delayed filling the prescription for the child's ear infection and on the doctor's diagnosis of "failure to thrive."

The juvenile court declined to find the child to be a child in need of

assistance. The court characterized the parents' delay in filling the prescription as "alarming," but concluded that under all the circumstances a CHINA adjudication was not warranted. The court noted that the parents had promptly filled the prescription when instructed to do so a second time. The court also noted that the parents have cooperated with social workers and have voluntarily accepted services. The State has appealed from this determination.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we give weight to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

The State argues on appeal that the juvenile court erred by finding evidence insufficient to support a CHINA adjudication. We cannot agree. Child in need of assistance proceedings are governed by Chapter 232 of the Iowa Code. Provisions for an adjudicatory hearing are set forth in section 232.96, which provides in part:

> 8. If the court concludes facts sufficient to sustain the petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.
>
> 9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

Reviewing the record before this court, we believe the trial court had a sufficient basis to conclude that the petition had not been established by clear and convincing evidence. Neglect is defined as any nonaccidental physical injury suffered by the child as a result of acts or omissions by the parent. Iowa Code § 232.2(37) (1983). Evidence reveals that the mother's failure to administer medication as directed by the physician delayed the child's recovery from the ear infection and arguably contributed to her failure to gain weight. While this may be viewed as evidence of neglect, this fact cannot be considered in isolation. The

record also reflects that the parents were not responsible for the initial illness of the child. Moreover, when instructed by the physician a second time, the medication was promptly given. Since the incident, the parents have voluntarily accepted services from family support workers and social workers. Testimony reveals there have been no further incidents. In light of these circumstances, we cannot say that court intervention is needed.

This court is not unmindful of the gravity of failing to give proper medication to a young child. If future problems occur, it may be in the best interests of the child to have some sort of intervention by the State. Indeed, we recognize that as parens patriae, the State has a duty to ensure that every child receives proper care and treatment. In Interest of Welcher, 243 N.W.2d 841, 843-44 (Iowa 1972). Yet at this point in time, we believe that there was sufficient evidence for the court to conclude aid was not required.

II.

The State also asserts that the juvenile court erred in finding a single incident of neglect is not sufficient to sustain a child in need of assistance petition. We do not believe the State has properly interpreted the court order. The statement in question reads as follows: "However, a finding of neglect must consider all circumstances, not a single incident." The trial court went on to set forth other relevant facts it considered in reaching is decision. Read in context, it is evident the trial court was merely pointing out that all surrounding circumstances must be considered, not one factor in isolation. On this basis, we conclude that the court did not err.

III.

The State's third assignment of error is that the juvenile court prematurely concluded that the voluntary cooperation of the parents would continue. In support of this proposition, the State relies on In Interest of G.R., 348 N.W.2d 627 (Iowa 1984). In G.R., the supreme court recognized that section 232.96(8) of the

Iowa Code sets forth alternative grounds for which a petitioner can be dismissed. First, it can be dismissed if the State has not established by clear and convincing evidence that the child is in need of assistance. Secondly, the juvenile court can conclude that its aid is not required under the circumstances. The supreme court discussed this second basis for dismissal at length, noting that it should be construed narrowly. In this regard, the court stated:

> ...if evidence shows that resources are available to correct the specific problem rendering a child in need of assistance, the court should not readily invoke this statutory standard as a basis for dismissal unless there are strong grounds for concluding its aid is not required.

Id. at 631. The State essentially argues that there are not strong grounds for the court to conlude that aid is not required and that under this standard the court should not rely on the promise of the parents to voluntarily cooperate with social services.

We believe the State's reliance on G.R. is misplaced. Unlike in G.R., the trial court in the instant case did not rely on the second basis for dismissal set forth in section 232.96. Rather, the juvenile court determined that the State had not met its burden of proof in establishing that the child was in need of assistance due to neglect. We reject any contention that the court assumed the parents would continue to voluntarily cooperate with social services. The record does not reflect that such a presumption was made. The court merely noted that the parents had been cooperative and there had been no further incidents that would indicate neglect. Furthermore, if the State had any reason to believe cooperation would cease, evidence should have been presented to that effect.

IV.

Finally, the State argues that the juvenile court erred by refusing to enlarge the findings to include a subsequent juvenile court order involving J.M.L.'s three siblings. We cannot agree. The court made a proper decision based on the evidence before the court. Rule 179(b) is not an appropriate vehicle "for reopening

the record for additional evidence to correct omissions made in the trial of an issue " In re Elliot, 319 N W.2d 244, 247 (Iowa 1982)

Finding no error, we affirm.

AFFIRMED.