

FILED

JUN 25 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN THE INTERESTS OF**
A.C. AND L.C., Children;**C.(C.)E., Mother, and G.G.C.,**
Father,

Appellants,

STATE OF IOWA,

Appellee/Cross-Appellant.

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Filed June 25, 1986

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Appeal from the Iowa District Court for Pottawattamie County (Nos. 12-1008, 12-0191, 12-0150) - G. C. Abel, District Associate Judge.

The mother and father of two boys appeal, and the State cross-appeals from a juvenile court order which terminated the mother's and father's parental rights and placed one of the boys in the guardianship of his maternal grandparents and the other boy in the guardianship of the department of human services.

AFFIRMED AS MODIFIED.

Stephen L. Rosman and Hugh P. Finerty, Jr. of Finerty & Rosman, Council Bluffs, for appellant C.(C.)E.

Steven R. Walters and Gregory L. Waggoner of Waggoner & Walters, Council Bluffs, for appellant G.G.C.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and E. A. Westfall, Assistant County Attorney, for appellee/cross-appellant, State of Iowa.

Timothy O'Grady of Over, Over & Over, Council Bluffs, for cross-appellees, A.E. and C.E., the children's maternal grandparents.

Clarence B. Meldrum, Jr. of Meldrum & Markel, Council Bluffs, and William R. Hughes of Stuart, Finley, Peters, Thorn, Smits & Sens, Council Bluffs, for the children.

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

DONIELSON, J.

The mother and father of two boys appeal, and the State cross-appeals from a juvenile court order which terminated the mother's and father's parental rights and placed one of the boys in the guardianship of his maternal grandparents and the other boy in the guardianship of the department of human services. On appeal, the mother and father each assert that there was not sufficient evidence to support the termination of her and his parental rights. On cross-appeal, the State asserts that the juvenile court should not have placed the one boy in the guardianship of his maternal grandparents. We affirm as modified.

A.C. was born to C.C.E. in 1973 out of wedlock. In 1977, C.C.E. married G.C., and G.C. subsequently adopted A.C. In 1979, a child, L.C., was born of this marriage. On July 3, 1981, G.C. was arrested at a local drugstore in Council Bluffs after he paid for and picked up a packet of developed photographs containing nude photographs of G.C. with an erection, a large number of photographs depicting eight-year-old A.C. with an erection, and a variety of other sexual poses. Pursuant to a search warrant, the police confiscated hundreds more photographs depicting nudity and sex acts with C.C.E., C.C.E.'s twelve to fourteen year old sister, and countless photographs of nude teenage females. The police also confiscated a number of pornographic magazines, five of which have predominant themes of pictures of nude preteen girls.

A.C. and L.C. were taken into protective custody following their father's arrest, and on July 10, 1981, a temporary removal hearing was held. That same day a CHINA petition was filed alleging that the children were in need of assistance pursuant to Iowa Code sections 232.2(5)(c)(2) and 232.2(5)(i) (1981). Following this hearing A.C. was placed in a foster home and L.C. was returned to his mother.

On July 31, 1981, A.C. was adjudicated a child in need of assistance and

was placed under the guardianship of the department of human services. In that order the court directed the department of human services to file a new petition as to L.C. for purposes of alleging that L.C. was a child in need of assistance on the basis of Iowa Code section 232.2(5)(b) (1981), due to the court's fear that L.C. was under imminent threat of future abuse. On September 9, 1981, L.C. was adjudicated a child in need of assistance. On September 23, 1981, a dispositional hearing was held, and both children were placed in foster care. Subsequent review hearings in April and December of 1982 found both children still were in need of assistance.

On September 22, 1981, G.C. pled guilty to one count each of sexual exploitation of children, in violation of Iowa Code section 728.12 (1981), and lascivious acts with a child, in violation of Iowa Code section 709.8 (1981). G.C. was sentenced to concurrent terms of ten and five years, respectively. In October 1982, criminal charges were brought against C.C.E., as her involvement in A.C.'s sexual abuse became clear, and subsequently pled guilty to a charge of indecent contact with a child in violation of Iowa Code section 709.12 (1983). She was sentenced to a term of two years, but was released after ten months.

In 1983, the State petitioned to terminate the parental rights of both C.C.E. and G.C. pursuant to Iowa Code section 232.116(3) and 232.116(5) (1983). In 1983, A.E. and C.E., the parents of C.C.E., petitioned to intervene. In 1984, termination proceedings were held. At trial, G.C. testified that he did indeed sexually abuse A.C. and other teenage girls for a period of several years. A.C. testified that he would often have sex with his father and that he wanted to return to his mother so that he could have sex with her. Through the testimony of several psychiatrists, social workers, and foster parents, the court also found that C.C.E. had also been intimately involved in A.C.'s sexual abuse and that A.C. was deeply disturbed due to his sexual aggressiveness towards others.

After trial, the court concluded that it would be in both children's interest that the parental rights of their parents be terminated under both Iowa Code sections 232.116(3) and 232.116(5), and placed A.C. in the guardianship of the department of human services and L.C. in the guardianship of his maternal grandparents. G.C. and C.C.E. have appealed and the State has cross-appealed from the termination order.

On appeal, we review parent-child terminations de novo. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

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G.C. and C.C.E. assert that the State failed to show by clear and convincing evidence that the parent-child relationship with their two boys should be terminated. We disagree.

In its petition, the State alleged two statutory grounds for terminating parental rights, Iowa Code sections 232.116(3) and 232.116(5) (1983). The district court termination order contained findings adverse to G.C. and C.C.E. on both grounds. Generally, if one of these grounds is established by clear and convincing evidence, the termination will be upheld. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). We find that clear and convincing evidence exists requiring termination on the basis of both Iowa Code sections 232.116(3) and 232.116(5) (1983).

Iowa Code section 232.2(5) (1983) defines the conditions pursuant to which a court may find a child in need of assistance. Section 232.2(5) provides in pertinent part:

5. "Child in need of assistance" means an unmarried child:

* * *

b. Whose parent, guardian or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

* * *

(2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

d. Who has been sexually abused by his or her parent, guardian, custodian or other member of the household in which the child resides.

* * *

f. 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.

* *

i. Who has been subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

Once the court has determined that a child is in need of assistance, the court is empowered to terminate parental rights under section 232.116(3) if the court finds that one or both parents have physically or sexually abused the child, that the child had previously been adjudicated as a child in need of assistance, and that there is clear and convincing evidence that the parents had received or were offered services to correct the situation which led to the abuse. The court may also terminate parental rights pursuant to section 232.116(5) if the child has been adjudicated in need of assistance, has been placed out of the parent's

custody for more than twelve months, and there is clear and convincing evidence that the child cannot be returned to the parental home because definitional grounds of a "child in need of assistance" still exist.

The paramount concern in a determination of this nature is the best interests of the child. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984); In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). While we recognize the importance of integrity of the family unit and that the child's interests may best be served in the care of his parents, such principles, while noble, are not sacrosanct, but may be defeated by parental conduct. Dameron, 306 N.W.2d at 745. In evaluating the child's best interests, we necessarily consider the child's long-range as well as immediate interests. Id. Intrinsic to this evaluation is an examination of the parent's past performance, from which valuable insight may be gleaned as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1978). In addition, the State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment and must intercede when parents have abdicated that responsibility. K.L.C., 372 N.W.2d at 226; Dameron, 306 N.W.2d at 745.

Turning to the record, C.C.E. asserts that the State failed to show by clear and convincing evidence that she had knowledge of the sexual abuse inflicted upon A.C. and that through counseling she is now in a better position to recognize and prevent possible future abuse. The record, however, is replete with evidence to the contrary. Numerous photographs were offered into evidence depicting C.C.E. and A.C. together in the nude taking a bath. Several photographs depict C.C.E., G.C., and A.C. standing nude together in the bathtub, with G.C. having an erection. A large number of photographs reveal C.C.E. in various stages of nudity and sexual positions, some taken while C.C.E. was pregnant. C.C.E.

also admitted seeing a nude photograph of her fourteen-year-old sister and that her sister was the photographer for several of the nude scenes.

C.C.E. vehemently denies any involvement with her husband in the sexual abuse of A.C. Yet the weight of the testimony offered into evidence clearly reveals that on at least one occasion A.C. participated in anal-vaginal intercourse with his mother. Through the testimony of A.C., and through the testimony of numerous psychiatrist, social workers, and foster parents who observed and talked with A.C. following his removal from the C. home, A.C. spoke of various sexual games, such as the stripping game, hickey game, and rape game, which were preludes to, or part of, sexual contacts. A.C. described in graphic detail to his psychiatrist, social workers, and foster parents his parents' sexual activities and spoke of participating in three-way activities with his parents.

C.C.E. asserts that through her various counseling sessions, she has learned what conditions led to the sexual abuse of her son A.C., and that she is now better equipped to prevent any future abuse. The record reveals, however, that C.C.E. refused the help of various social workers following A.C.'s removal and agreed to seek counseling only after it became apparent that she might lose her parental rights. The record also reveals that while she did attend therapy sessions for approximately eight months, C.C.E. quit when points of confrontation were reached. During these therapy sessions, C.C.E. was observed as being passive and unresponsive and never admitted her abuse of A.C. Throughout this entire case, C.C.E. has consistently been hostile to any efforts by the department of human services to help her.

Concerning G.C., we need but briefly describe his activities with A.C. and others. The old adage that "a picture is worth a thousand words" is extremely appropriate in this case, except that here over two hundred photographs were introduced into evidence. Many photographs feature A.C. in various stages

of nudity, and several depict A.C. with an erection. G.C. admits that he took these photographs and encouraged A.C. to participate in G.C.'s sexual fantasies. G.C. admits to fondling A.C., being masturbated by A.C., and having oral sex with A.C. G.C. additionally showed A.C. explicit photographic films and magazines and encouraged A.C. to entice other children to their home. A large number of photographs reveal G.C. engaging in intercourse with other teenage girls, most if not all in the presence of A.C. G.C. was also aware that A.C. had been sexually molesting his younger brother, L.C.

G.C. argues that prior to his arrest he was a pedophile, but that since then he has been saved by God. G.C. also claims that through his own efforts and through prison therapy sessions he has taken great strides in improving himself, despite the lack of effort of the State to offer such services pursuant to section 232.116(3)(c). We note initially that approximately six weeks after his arrest, G.C. was convicted and sentenced to prison and therefore out of the jurisdiction of the department of human services. While in prison, G.C. was offered many services by the correctional facilities to correct his problem. While G.C.'s condition appears to have improved somewhat in thirty months of incarceration, the district court found, and we agree, that G.C. has shown little remorse in his testimony. G.C., throughout the termination proceedings, attempted to rationalize his behavior as being caused by his loneliness when C.C.E. was hospitalized with the birth of L.C. A man of superior intelligence, G.C. has for a period of over ten years manipulated those around him to fulfill his sexual fantasies. We are not persuaded that G.C. has fully accepted the gravity of his actions.

Upon consideration of the entire record, we believe that the State has proved by clear and convincing evidence that G.C. and C.C.E. were intimately involved in the sexual abuse of their children and that, as a result, their parental

rights should be terminated. We are not persuaded that either parent is mentally equipped to give their children the love, patience, and support children so desperately need in their formative years. A.C., in particular, still suffers severe emotional trauma and sexual aggressiveness, and only time will tell if A.C. will fully recover. While it appears that L.C. was not subjected to the sexual abuse that was inflicted upon A.C., his own father testified that he was unsure whether or not he would have similarly abused L.C. in the future. Considering the past behavior of his parents, plus the very real risk of recidivism, we believe there is a grave risk that L.C. would be subjected to future abuse, a risk we are unwilling to take. We, therefore, hold that the statutory requirements of sections 232.116(3) and 232.116(5) have been proven by clear and convincing evidence and that the parental rights of G.C. and C.C.E. should be, and are, hereby terminated.

II.

In its cross-appeal, the State contends that the district court erred by placing L.C. in the guardianship of his maternal grandparents. A.E. and C.E., the maternal grandparents, have also filed a brief on their behalf, contending that it would be in L.C.'s best interest to remain with them.

Iowa Code section 232.117(c) specifically grants grandparents a legal right to be considered as guardians and custodians of children following termination of parental rights. Iowa courts have long recognized that the best interests of the child may best be served by awarding custody to and granting visitation with grandchildren to the grandparents. See Matter of Guardianship and Conservatorship of Ankeny, 360 N.W.2d 733, 737 (Iowa 1985); In Interest of J.R. and S.R., 315 N.W.2d 750, 753 (Iowa 1982); Alingh v. Alingh, 259 Iowa 219, 226, 144 N.W.2d 134, 139 (1966). The district court found that though there was a possibility that L.C. may be in some risk by remaining in his grandparents'

care due to continued contacts with his mother, the desirability of maintaining family identity far outweighed the risks. Upon balancing the risks and the benefits involved, we are compelled to disagree.

Under de novo review, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." Dameron, 306 N.W.2d at 745. In the grandparents' favor, we find that they are sincerely concerned with the well-being of their grandchildren. Both A.E. and C.E. are employed in stable jobs and could financially afford the extra expense of caring for an extra child. They own their own home and appear to be in good health. Both have made determined efforts to curb L.C.'s aggressive behavior towards other children. L.C. has a relatively good relationship with other members of the grandparents' family and apparently has a bond of affection with his grandparents.

However, we find factors that are greatly disturbing. C.E. is committed to the belief that her daughter was blameless for the sexual abuse of A.C. despite overwhelming evidence to the contrary. C.E. was not successful in recognizing A.C.'s lack of emotion and aggression, despite practically raising A.C. for several years. A.E. and C.E. were not aware of G.C.'s exploitation, seduction, and sexual abuse of their younger daughter despite the fact that such events were taking place in their home on a weekly basis. A.E. and C.E. failed for some time in discovering A.C.'s sexual abuse of L.C. while in their home. Additionally, A.E. and C.E. failed to recognize that A.C. achieved an erection each time he was hugged and that A.C. harbored sexual fantasies towards his grandmother. L.C. would continue to have contacts with his mother, thereby potentially facilitating further sexual abuse.

The E.'s cite to In Interest of J.R. and S.R., 315 N.W.2d 750, 753 (Iowa 1982), for the proposition that where the qualifications of the grandparents

are without question, the mere risk of further contacts with the natural parents of the child is outweighed by the benefits of leaving the child with the grandparents. That case is distinguishable from the present in that the grandparents' qualifications and home were ideal in J.R., whereas in the present case grave questions remain as to the ability of the E.'s to spot future emotional problems L.C. may encounter. Id. at 753. For these reasons, we believe that it is in the best interests of L.C. that guardianship of L.C. be awarded to the department of human services.

AFFIRMED AS MODIFIED.