



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF	)	Filed December 27, 1979
DAVID BEASLEY,	)	236
Juvenile-Appellant.	)	<u>3-63231</u>

Appeal from Black Hawk District Court - George L. Stigler, Associate Judge.

A child, by way of his attorney, appeals order of trial court providing for placement of the child in the home of his natural father following a prior adjudication of the child as in need of assistance. Reversed and Remanded.

W. H. Gilliam of Gottschalk & Gilliam, Cedar Falls, for appellant.

James Dunbar, Waterloo, for Debbie Beasley.

John Ackerman, Cedar Falls, for Marvin Beasley.

Penelope Tvrdik, Waterloo, for Dorothy Scheel.

Thomas J. Miller, Attorney General of Iowa, Stephen C. Robinson & Francis C. Hoyt, Jr., Assistant Attorney Generals, and David Correll, Black Hawk County Attorney, for petitioner.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

A four-year-old child, David Beasley, by way of his attorney appeals order of trial court providing for his placement in home of his natural father following a prior adjudication as a child in need of assistance. The child had been removed from the father's home in September 1978 by an order for immediate custody requested by the Iowa Department of Social Services (DSS) following allegations of child abuse committed by the step-mother. For reversal, appellant contends the trial court decision was erroneous because the trial court incorrectly excluded information needed to make a carefully considered decision, and the facts in the record do not support the decision. This insufficiency of evidence, appellant asserts, is due to the trial court's improper termination of cross-examination and failure to grant a continuance to allow testimony to be taken of the psychiatric social worker who had been counseling the child, father, and step-mother. We reverse the judgment of the trial court and remand for further proceedings in accordance with this decision.

I.

Principles governing our review have been aptly stated in In re Welcher, 243 N.W.2d 841 (Iowa 1976):

In this special proceeding our review is de novo. In re Delaney, 185 N.W.2d 726, 728 (Iowa 1971). The paramount consideration is the best interest of the child. In Interest of Rice, 236 N.W.2d 40, 43 (Iowa 1975). The presumption a child's best interests will be best served by leaving it with its parents is not conclusive. In Interest of Osborn, 220 N.W.2d 632, 634 (Iowa 1974); In re McDonald, 201 N.W.2d 447, 453 (Iowa 1972). It is the duty of the State, as parens patriae, to see that every child within its borders receives proper care and treatment. In re Morrison, 259 Iowa 301, 311, 144 N.W.2d 97, 103 (1966).

Welcher, 243 N.W.2d at 843-44; see Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977).

II.

David Beasley is the son of Debra and Marvin Beasley. After the marriage between Debra and Marvin was dissolved, Marvin assumed custody of David. Marvin married his current wife, Beverly Beasley, shortly after the dissolution was finalized. Beverly has three children from a prior marriage who reside with the couple.

The DSS became involved with David pursuant to a series of child abuse references concerning him. A DSS social worker, Nancy Gipple, filed a request for immediate custody and affidavit on September 8, 1978. The court ordered the DSS to

assume custody of David, and he was placed in a foster home. After the hearing on the petition for child in need of assistance, the trial court entered an order finding that all parties in interest stipulated David was a child in need of assistance. A dispositional hearing was then held on February 28, 1979.

At this hearing, Nancy Gipple was called by the petitioner and questioned about her change in recommendation regarding the custody of David. She testified that although there had been numerous child abuse referrals, only one had been substantiated, and the reason for her previous petition to remove the child from the father's home was due more to the emotional turmoil in the household and the family's lack of cooperation, than the alleged child abuse. She further testified about the changed circumstances since the time the child was removed. She asserted Marvin and Beverly had become receptive to counseling, with positive results, and David had continued the mental and emotional development he had been making in the foster home after returning to his father's home on February 1, 1979.

On cross-examination, counsel for David questioned Ms. Gipple about the child abuse reports received by the DSS but the trial court directed counsel to restrict his questions to the substantiated incident of child abuse. Counsel for the grandparents attempted to cross-examine Ms. Gipple regarding DSS contacts with a son of Beverly, but was stopped by the trial court on relevancy grounds. Counsel for the grandparents then questioned Ms. Gipple about child abuse allegations made by neighbors of the Beasleys and the sufficiency of Ms. Gipple's investigations of those allegations. After an admonition by the trial court to refrain from asking questions that called for inadmissible hearsay, the grandparent's counsel made an offer of proof regarding the allegations. The trial court overruled the offer of proof, finding the allegations to be inadmissible hearsay.

On recross-examination, David's counsel questioned Ms. Gipple about whether Beverly was abused as a child. The trial court indicated this line of reasoning would not be allowed unless counsel could prove Beverly was abusing some child. Counsel referred to the substantiated incident that originally caused removal of David. The trial court termed that incident a spanking, not abuse, and ordered counsel to abandon that line of questioning. Counsel then attempted to question Ms. Gipple about the affidavit she

filed with the original request for immediate custody and the incidents of abuse mentioned therein. The trial court stated the affidavit and filing policies of the DSS were not open to inquiry and ordered counsel to move on to something else. Counsel for David made no offer of proof, but did ask the trial court to reconsider its rulings prohibiting certain lines of questioning.

At the close of testimony, David's counsel, joined by counsel for the natural mother, moved for a continuance in order to allow Irene Plogman, a DSS psychiatric social worker, to testify about her counseling with the Marvin Beasley family. The trial court denied the continuance. It then commented that while there was a great deal of innuendo regarding incidents of child abuse, there was very little evidence. Stating that it considered the Beasleys were resolving their problems, the trial court ordered David returned to his father's home. David appeals that order.

III.

Our governing concern is the best interests of the child. Iowa R. App. P. 14(f)(15). A thorough examination of all the facts is therefore required to fully inform the trial court and, thereby, insure a proper disposition. Relying on this premise, appellant argues the trial court incorrectly limited cross-examination and presentation of evidence to the extent that relevant and material information was excluded from the record. Although a close question, we agree the trial court abused its discretion by excluding relevant and material evidence.

The issue of the proper scope of cross-examination is whether the evidence that would have been adduced on cross-examination tends to establish that a proposed inference is more or less likely than without such evidence. State v. Sheffey, 250 N.W.2d 51, 55 (Iowa 1977). The scope of cross-examination is within the discretion of the trial court, State v. Jackson, 259 N.W.2d 796, 801 (Iowa 1977); however, the trial court is not to exclude matters that are relevant and material. State v. Van Rees, 246 N.W.2d 339, 346 (Iowa 1976). Cross-examination may be used to rebut not only the direct testimony but the inferences and presumptions which such testimony reasonably raises. Avery v. Harms Implement Co., 270 N.W.2d 646, 650 (Iowa 1978).

In this case, a hearing was held concerning a motion to return David to the home of his natural father. The ultimate issue to be decided was whether such an action

would be in David's best interests. Any information that would reasonably shed light on the question was within the proper scope of cross-examination. Id.; see Welcher, 243 N.W.2d at 844. The cross-examination of Nancy Gipple—by David's counsel, the natural mother's counsel, and the grandparent's counsel—sought to elicit information regarding her recommendation to return David to his father's home. The questions concerned, among other subjects: The extent of her investigation of various alleged incidents of abuse; the step-mother's childhood experiences of being abused by her parents; and Ms. Gipple's prior recommendation to the trial court for removing David from the custody of his father, which was based on an affidavit to the same facts she claimed at the hearing should no longer be considered by the trial court. Each line of questioning would have elicited answers that would have made the inference that the best interests of David would be served by returning to his father more or less likely. See Long, 255 N.W.2d at 143. The fact that the evidence may be hearsay is not alone determinative of its admissibility. See In re Scarlett, 231 N.W.2d 8, 10-11 (Iowa 1975); § 232.31, The Code 1977.

Allegations of child abuse are so serious that a court should be certain an adequate investigation of each charge has been made to determine its validity. See In re Osborn, 220 N.W.2d 632, 633-34 (Iowa 1974). The trial court apparently decided on its own that the allegations were mere innuendo and the result of neighborhood feuding. This may well be the case, but a closer scrutiny of the investigations of the charges was needed to substantiate such a finding. The trial court improperly prevented a complete record from being made by its limitation of cross-examination. See Orcutt v. State, 173 N.W.2d 66, 73 (Iowa 1969). This denial of proper cross-examination was an abuse of discretion. In view of the importance of the issue involved, we hold David was prejudiced by the trial court's rulings and is entitled to a new hearing. Avery, 250 N.W.2d at 650.

Likewise, we conclude the trial court abused its discretion in not granting the continuance requested by counsel for the juvenile and joined by counsel for the natural mother and counsel for the grandparents. See Orcutt, 173 N.W.2d at 70-71. This continuance was requested to allow the calling of Irene Plogman as a witness since Ms. Plogman was at the time of the hearing engaged with patients until 9 p.m. that evening.

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While we do not wish to appear to be condoning delay by requiring the granting of needless continuances, this case presents a situation where a continuance was justified. This witness could have provided useful, relevant information concerning the progress made by Marvin and Beverly as a result of her counseling efforts. A report from Ms. Plogman was in the record detailing her conclusions and recommendations. However, questioning of Ms. Plogman as to her conclusions and recommendation would have provided additional valuable information as to their validity and her credibility. Although counsel should have perhaps subpoenaed Ms. Plogman, this oversight is excusable under these facts and not a valid reason to prevent useful testimony in a case of this type. There had been other continuances in the case and there was no showing that a continuance would unduly burden or prejudice either party. While a trial court is vested with discretion in the matter of continuances, there are limits to that discretion; here those limits were exceeded. See id.

IV.

For these reasons, we reverse the trial court and remand this case for a hearing to allow investigation into the matters sought to be raised by cross-examination in the prior hearing. We trust counsel will have all their witnesses available and ready to testify. Due to our disposition of this case, we make no judgment concerning the merits of this matter.

REVERSED AND REMANDED.

Oxberger, C. J. concurs specially.

OXBERGER, C.J. (specially concurring)

I concur in reversal of this matter due to trial court's improper limitation of cross-examination. Because that issue is dispositive, I would not address the matter of the denial of the continuance request.