IN THE COURT OF APPEALS OF IOWA

No. 1-718 / 01-743
Filed December 12, 2001

IN THE INTEREST OF RG., III and C.G., Minor Children,

A.G., Mother,
Appellant.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Gerald Magee, Associate Juvenile Judge.

The mother of two minor children appeals a dispositional order from a juvenile court transferring temporary legal custody to the Department of Human Services for placement in foster care. **AFFIRMED.**

David A. Grooters of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, Leslie Ayers, Legal Intern, and Gregg Rosenbladt, Assistant County Attorney, for appellee-State.

Mark Young and Amy D. Van Es of the Young Law Office, Mason City, guardians ad litem for minor children.

Roger W. Evans, Sioux Center, for father R.G., Jr.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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VAITHESWARAN, J.

A mother appeals a dispositional order transferring temporary legal custody of her children to the Department of Human Services for placement in foster care. We affirm.

I. Background Facts and Proceedings

Autumn has two children, Richie and Cheyenne, born in 1995 and 1996 respectively. Both children have special needs requiring extra supervision. Richie has been diagnosed with attention deficit hyperactivity disorder (ADHD) and a behavioral disorder and Cheyenne has displayed aggressive behaviors and may also have ADHD. Autumn herself suffers from depression and other mental disorders.[1]

The family first came to the attention of the department in 1998 when Autumn and her former husband were found to have provided Richie with inadequate food. The department issued a founded child abuse report against both parents for denial of critical care.

Two years later, school authorities reported Richie had a bruise on his neck that he claimed was caused by his mother. Following an investigation, the department issued another founded child abuse report against Autumn.

The juvenile court determined Richie and Cheyenne were children in need of assistance (CINA). The court subsequently entered a dispositional order transferring temporary legal custody of them to the department for placement in foster care. Autumn appeals, contending: 1) the juvenile court's order is based

[1] She has been diagnosed with bipolar disorder, depression and borderline personality disorder and is taking a variety of prescription medications. Autumn has been hospitalized for suicidal ideation or self-harm ten times since the age of sixteen.

on speculation as to future injuries; 2) she improved her parenting skills; 3) the children's best interests would be served by allowing them to remain with her; and 4) the juvenile court placed too much weight on the opinions of professionals who had not adequately observed the children.[2] Our review of her appeal is de novo. *In re K.R.*, 537 N.W.2d 774, 776 (Iowa 1995).

II. Speculation as to Future Injuries

To obtain a ruling transferring custody of children from a parent, the State must prove by clear and convincing evidence that the children cannot be protected from a harm that would justify adjudicating them as children in need of assistance. Iowa Code § 232.102(5)(b)(1999). A harm that would justify a CINA adjudication not only includes physical harm and mental injury but also includes imminent harm caused by a parent's failure to exercise a reasonable degree of care in supervising a child. Iowa Code § 232.2(6)(b),(c).

Autumn argues there is insufficient evidence of physical abuse to support a transfer of custody. She maintains that, with the exception of the bruise, there is no evidence Autumn has directly caused the children physical harm and there is no evidence her alleged failure to supervise them has resulted in physical harm. While the record contains only one founded child abuse report based on physical abuse, there is evidence Autumn lacks the ability to control her children, rendering them susceptible to additional physical harm. *See* Iowa Code § 232.2(6)(c)(2). For example, less than a month before the dispositional hearing, a social worker who had been dealing with the family for several months

[2] The children's father has had minimal contact with them and does not appeal the order.

expressed concerns with Autumn's ability to consistently manage the children's aggression. The juvenile court noted that removal of the children was based on this inability to control the children. The court stated:

> [c]ontinuation in said home is contrary to the welfare of the children because of mother's basic inability to control their behaviors, lack of social interaction, mother's inability to adequately parent and nurture them and the dangers posed by their frequent out-of-control behaviors . . .

See In re D.C., 436 N.W.2d 644, 646 (Iowa Ct. App. 1988). We find ample support for this determination and, accordingly, reject Autumn's assertion that proof of injury was speculative.

III. Improvement in Parenting Skills

Autumn next contends transfer of custody was not warranted because her parenting skills improved. We agree that Autumn benefited from intensive services and, at the time of the dispositional hearing, was making an effort to implement the parenting skills she learned. Indeed, there was some evidence these efforts were having a positive effect on Richie, as his attention-seeking behaviors at home were decreasing and he was following through "without being reminded more than once or twice per occurrence." However, professionals opined that Autumn's progress was not sufficient. They pointed out Autumn had been receiving a variety of services even before Richie's bruise came to light, but failed to consistently apply what she learned. *See In re D.A.*, 506 N.W.2d 478, 480 (Iowa Ct. App. 1993). A psychologist noted that although Autumn functioned at a below-average intellectual range, "that's not a significant enough deficit to explain why she couldn't learn those skills in that extended period of time." Others noted Autumn's unresolved mental health problems limited her ability to

provide the emotional sustenance the children needed. *See In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (noting deep seated personality disorders prevented mother from implementing parenting skills she claimed to possess). In light of this evidence, we are not convinced Autumn's parenting improvements warrant reversal of the dispositional order.

IV. Best Interests

Autumn next argues it is in the children's best interests to have them remain with her. The record reflects the children love and are bonded to their mother. For example, when Richie reported to school authorities that his mother caused his bruise, he also commented that he felt safe at home and liked living with his mother. However, an examining psychologist testified the children's physical, social and developmental well-being were at risk if they remained with Autumn. Social workers echoed this sentiment, noting that Richie was functioning well below average in his special education kindergarten class and Cheyenne was continuing to display aggressive behaviors both at home and at school. It is true certain professionals disagreed with these assessments. However, the majority opined that placement in foster care would afford the children the structure they needed in this formative period of their lives. On this record, we agree.

V. Expert Opinions

Finally, Autumn contends the juvenile court relied on opinions of professionals who did not adequately observe the children. We agree the psychologist who examined the children saw them under less than ideal circumstances, having required them to wait for more than two hours to see him.

However, others who saw the children regularly and over a lengthy period of time concurred in the psychologist's assessment. Therefore, we are not convinced the juvenile court's reliance on the professional opinions was misplaced.

VI. Disposition

We affirm the juvenile court's dispositional order transferring temporary custody of Richie and Cheyenne to the department for foster care placement.

AFFIRMED.