

IN THE COURT OF APPEALS OF IOWA

F I L E D

AUG 24 1988

CLERK SUPREME COURT

IN THE INTEREST OF E.L., A.L.,)
and S.L., Children,

B.L., Father,)
Appellant.)

8-268
87-684

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Appeal from the Iowa District Court for Polk County
(Juv.) (Nos. J6621-14, 6619-14, & 6620-14) - Larry
Eisenhauer, Juvenile Referee.

A father appeals from order adjudicating his three
children to be children in need of assistance. **AFFIRMED AND
REMANDED.**

Ray Sullins, Des Moines, for the appellant father.

Thomas J. Miller, Attorney General; Charles K. Phillips,
Assistant Attorney General; and Ray Blaise, Assistant County
Attorney, for the appellee State.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

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This is an appeal by a father, Appellant S.L., challenging the trial court's determination his three children should have been adjudicated children in need of assistance. He challenges the entry of an emergency order removing the children from his custody contending he was denied the opportunity for hearing. He contends his son now in foster care should be returned to him. The mother of the children is not a party to this appeal.

We review the evidence de novo. In re Blackledge, 304 N.W.2d 209, 210 (Iowa 1981).

I.

The children are siblings; two girls born in 1972 and 1980 and a boy born in 1979. The father and mother were married to each other. The marriage was dissolved in 1986. The dissolution decree gave the father custody of the children four days a week and the mother custody three days a week.

The parents' attitudes toward each other both before and after the dissolution were extremely hostile. The children were directly involved in a variety of serious disputes between the parents. The father had a problem with alcohol abuse and exhibited signs of violence toward the mother and at times the children. The children's school attendance suffered. There was a question of whether their nutritional needs were met. Neither parent exhibited the maturity

necessary to meet the children's needs. There is evidence one of the female children was sexually abused. Both parties make serious allegations against the other but neither accepts responsibility for their own actions. They have both used outside support groups to bolster their positions. We find clear and convincing evidence to support the order adjudicating the children to be children in need of assistance. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985).

II.

The father contends his son, who is close to him, should have been left in his care. Iowa Code section 232.101 provides:

1. After the dispositional hearing, the court may enter an order permitting the child's parent, guardian or custodian at the time of the filing of the petition to retain custody of the child subject to terms and conditions which the court prescribes to assure the proper care and protection of the child. Such terms and conditions may include supervision of the child and the parent, guardian or custodian by the department of human services, juvenile court office or other appropriate agency which the court designates. Such terms and conditions may also include the provision or acceptance by the parent, guardian or custodian of special treatment or care which the child needs for the child's physical or mental health. If the parent, guardian or custodian fails to provide the treatment or care, the court may order the department of human services or some other appropriate state agency to provide such care or treatment.

2. The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than eighteen months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make not more than two successive extensions of such supervision or other terms or conditions of up to twelve months each.

Iowa Code sections 232.102(4)(a) and (b) provide:

Wherever possible the court should permit the child to remain at home with the child's parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

(a) The child cannot be protected from physical abuse without transfer or custody; or

(b) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The purpose of these statutes is to keep custody with the parent wherever possible. See In re J.R.H., 358 N.W.2d 311, 320 (Iowa 1984). The father and son have considerable emotional bonding and the father has assumed a substantial part of his care. The father has actively participated in visitations since removal. Although somewhat belligerent in his attitudes, he has made an effort to cooperate. An argument is advanced the agency has thwarted visitation between the father and children.

We are concerned by a report seeking to have a no contact order entered because of the following reasons:

1. B.L. uses visits with A.L. to send messages to E.L. On February 10, 1987, B.L. told A.L., "Tell your sister that I'm not mad at her." I told B.L. that A.L. is not to give messages to E.L. B.L. went on to repeat, "E.L. thinks I'm mad at her for lying."

I told him that she did not lie.

He said, "Yes, she did." I told him to drop the subject and he did.

2. A.L. and E.L. are close in age, in school together and in the same foster home. It is impossible for A.L.'s visits with dad to not have an impact on E.L. and E.L. to know where he's going.

3. B.L. gives A.L. inappropriate adult messages to A.L..

B.L. told A.L. on February 17, that when this was all over they would be sueing [sic] everyone.

4. If A.L. was also sexually abused, he would never feel free to relate this with the pressure from his father.
5. B.L. needs to gain some motivation to work on¹ his problem of sexual abuse. Visitation with A.L. seems to appease him and keep him from feeling like making any changes.

The legislature provided specific guidelines for interpreting chapter 232 by stating:

This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state.

The underlying principle of our termination statute is to reunite families. If families are to be reunited, continual and meaningful contacts between parents and children must be encouraged not discouraged. The child should not be excluded from contacts with a parent to punish the parent. We remand to the trial court to hold a hearing to determine whether the agency has provided for sufficient and meaningful visitation between the father and the children, and to make such orders as are necessary to work toward our statutory goal of reuniting these children with their parents.

1. Charges of sexual abuse of a six-year-old female were made against the father. There is not clear and convincing evidence the father did sexually abuse the child. The father denies he committed sexual abuse.

III.

The father contends the children were removed from his home without notice to him. The State contends the matter is moot because an adjudication hearing has now taken place. Iowa Code section 232.78 provides in relevant part:

1. The juvenile court may enter an ex parte order directing a peace officer to remove a child from the child's home or a child day care facility before or after the filing of a petition under this chapter provided all of the following apply:

a. The parent, guardian, legal custodian, or employee of the child day care facility is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or the parent, guardian, or legal custodian has a prior instance of flight to avoid a child abuse investigation. (emphasis supplied).

The application for removal did not meet the dictates of the statute in so much as it fails to state the parents were asked and refused to consent to the removal and were informed of an intent to apply for an order of removal. The State has an obligation to follow the dictates of the legislature when children are removed from a parental home. While we agree with the State that the adjudicatory order superseded the temporary order, we note our displeasure with the state's failure to follow the statute in seeking a removal.

AFFIRMED AND REMANDED.

Hayden, P.J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

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I would affirm the trial court