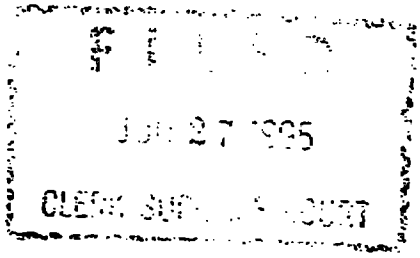
IN THE COURT OF APPEALS OF IOWA

No. 5-291 / 94-1562



IN THE INTEREST OF J.A., Minor Child,

D.A., Mother, and
J.A., Father,
Appellants.

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

Father and mother appeal the district court's review order continuing their minor son's placement in foster care in Iowa. **AFFIRMED.**

Charles H. Biebesheimer of Stillman, Goranson, Stone & Lovell, Mason City, for appellant-father.

Richard N. Tompkins, Jr., Mason City, for appellant-mother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Steven Tynan, Assistant County Attorney, for appellee-State.

Jacqueline R. Conway of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, P.L.C., Mason City, guardian ad litem for minor child.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

SACKETT, J.

The primary question in this appeal is whether Joey, a hearing impaired child, now in foster care in Iowa, should be transferred under the Interstate Compact to Texas, where his birth parents now live. His parents contend he should be and the State and his guardian ad litem disagree. The juvenile court refused to order the transfer. We affirm.

Joey is one of Jose and Diane's four children. An older brother, Raymond, has been in foster care in Iowa since mid-1992 and apparently will remain in foster care until he reaches his majority.

Joey, in the summer of 1993, left his parents' home and ran to where Raymond was living. Joey claimed his mother had physically abused him. He complained his mother hit him on the head with a belt and she drinks. It was determined by the Department of Human Services that his mother had physically abused him and taken his hearing aids as a punishment.

Subsequently, he and his two sisters were found to be children in need of assistance. By the time of the hearing, the two sisters were living with their father, Jose, and their grandmother in Texas. The Iowa juvenile court then placed Joey in foster care and ordered the two girls to be returned to Iowa.

At a hearing three months later, Joey was ordered to remain in foster care and the girls were allowed to remain with their parents in Texas. Diane was ordered to

be evaluated for psychological problems and problems with substance abuse and to attend what is referred to as a "batterer's education program."

In March 1994, the proceeding against the girls was dismissed and the Iowa court referred them to a Texas agency. Joey was ordered to stay in foster care.

In August 1994, Diane asked that Joey be allowed to join the family in Texas. Her request was denied. In denying the request, the juvenile court found Diane and Jose have not completed ordered programs, have had problems in Texas and had not cooperated with the authorities there, and Joey does not want to return to his family's care. There also was some concern about the type of educational programs available in Texas for Joey's handicap.

The family has a history of problems. While living in Iowa, there were numerous calls to law enforcement. The law enforcement personnel say it is difficult to determine the nature of the complaints but often it involved a no contact order or assault. The primary evidence of physical injury to the children was a scratch on Raymond's arm and, on one occasion, Raymond received a number of bruises, the exact number and severity not defined.

After the removal, Joey has lived in three foster placements. The first, a teacher requested he leave; the second, a family friend asked he leave. Apparently, he had run away from both of these placements as he has run away from his family home.

At the time of the hearing from which this appeal was taken, Joey resided with Kristin Davis, a young woman who is one of his teachers. The parents objected to this placement. We were advised at oral arguments he no longer resides with Kristin, so the challenge to this placement is moot.

Joey's father and sisters continue to reside in Texas. His mother apparently is there, too. Jose and Diane argue the distance between Texas and Iowa renders reasonable efforts to reunite the family meaningless and they are frustrated with reunification efforts. Jose and Diane contend the State has failed to comply with the requirements of Iowa Code section 232.2(4), in part, that a placement should be in close proximity to the parents' home.

We review de novo. *In re L.K.S.*, 451 N.W.2d 819, 821 (Iowa 1990). The current plan is to reunify the family. We agree with the parents that reunification is difficult if not impossible when parents and children live a great distance apart. We also agree the State has an obligation, where reunification with the parents is anticipated, to place the children in close proximity with their parents. There is a requirement reasonable services be offered to preserve the family unit. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994); *In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *In re B.L.*, 491 N.W.2d 789, 791-93 (Iowa App. 1992); *see In re M.D.S.*, 488 N.W.2d 715, 717 (Iowa App. 1992); *In re A.W.*, 464 N.W.2d 475, 478 (Iowa App. 1990).

However, the problems in this case cannot simply be solved by attempting to move Joey to Texas. First, he resists going. Second, he has a history of leaving placements, including foster placements, when he is unhappy with them.

We do not, under the facts of this case at this time, determine Joey should be moved to Texas. The record reflects a general lack of cooperation by the parents with Texas authorities. Jose and Diane have not cooperated with ordered programs. While we recognize Joey has had substantial problems in foster care in Iowa, we cannot find a move to a Texas placement at this time is in his interest. His parents also have an affirmative duty to show they have established a working relationship with Texas authorities. We have not based our determination on the availability of educational services in Texas. We have no reason to find Texas would not offer adequate services to Joey.

We affirm.

AFFIRMED.