

IN THE COURT OF APPEALS OF IOWA

No. 6-862 / 06-1446
Filed November 16, 2006

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

J.D.R., Father,
Appellant.

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

A father appeals from the juvenile court's adjudication and dispositional
orders concerning his daughter. **AFFIRMED.**

Kelly J. Smith of Kelly J. Smith, P.C., Waterloo, for appellee.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Gregory M. Lievens, County Attorney, and Martin Peterson, Assistant
County Attorney, for appellee.

Linda Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for mother.

Patrick Vickers of Vickers Law Office, Greene, guardian ad litem for minor
child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

A father appeals from his daughter's adjudication as a child in need of assistance and the juvenile court's dispositional order placing her with her mother. He contends (1) the child's ex parte removal was improper, (2) the court erred in finding she was a child in need of assistance, (3) the court erred in not finding the assistant county attorney and guardian ad litem had a conflict of interest, (4) the court should have ordered services as requested by the father, and (5) reasonable reunification efforts were not made since the child's removal. We affirm.

I. Background

The child, born in October of 2001, was placed in her mother's primary physical care following her parents' divorce. Her father had visitation. In 2003 the child was suffering from nightmares and wetting the bed following visits with her father. The child's play therapist reported indications the child had been abused sexually. In January of 2006, the Department of Human Services investigated and issued a founded report naming the father as the perpetrator. The juvenile court ordered the child's removal ex parte, placed the child in the custody of the department, and issued a no-contact order prohibiting contact between the father and child. At the hearing on the temporary removal, the court was advised the father was in agreement with the continued removal of the child and was not contesting the continued entry of a no-contact order. The court found the removal was necessary without the implementation of services, ordered that the child's custody remain with the department, and left the no-

contact order in effect. The department placed the child in her mother's care, where she had been before the removal.

The adjudication hearing was scheduled for the beginning of March. The father complained the assistant county attorney and guardian ad litem both had potential conflicts of interest.¹ The adjudicatory hearing was rescheduled for the end of June. At the hearing, the father denied sexually abusing the child. Following the contested adjudicatory hearing, the juvenile court entered an order in mid-August, finding the father sexually abused the child, ordering the child's adjudication as a child in need of assistance, continuing her placement with her mother, and continuing the suspension of visitation by the father until recommended by the department or the child's therapist. The court denied all of the father's pending motions.

A contested dispositional hearing was held in late August. The court denied the father's request for family-centered services and a family psychosocial evaluation until his contact with the child was reestablished and the department recommended the evaluation. The court continued the child's placement with her mother, continued the suspension of visitation, ordered the father to complete a psychosocial evaluation and any recommended treatment, and issued a no-contact order between the father and the mother. The father appeals.

¹ The child's mother works at a local bank. The assistant county attorney's wife works for the same bank, but in a different area. The guardian ad litem has provided legal services to the bank, but had not met the mother before these proceedings.

II. Claims on appeal

The father claims (1) the child's ex parte removal was improper, (2) the court erred in finding she was a child in need of assistance, (3) the court erred in not finding the county attorney and guardian ad litem had a conflict of interest, (4) the court should have ordered services as requested by the father, and (5) reasonable reunification efforts were not made since the child's removal.

III. Scope of review

Our review of child-in-need-of-assistance proceedings is de novo. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

IV. Discussion

A. *Ex parte removal.* The father first contends the child's removal did not meet the requisites of section 232.95 for an ex parte removal. He does not explain in what particulars the removal does not follow section 232.95. There is no indication in the ruling on the removal hearing that the father raised this claim at that hearing. The court notes it was informed the father did not object to the child's continued removal. In reviewing counsel's written closing argument to the June adjudicatory hearing, we find a procedural claim that the petition was not filed within three days of the removal. The State argues that once disposition is ordered, it is too late to raise alleged errors in the removal. See *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994) ("Any error committed in granting the temporary ex parte order cannot now be remedied. We cannot go back in time and restore custody based on alleged errors in the initial removal order."). We conclude this claim was not preserved for our review. See *Benavides v. J.C.*

Penney Life Ins. Co., 539 N.W.2d 352, 356 (Iowa 1995); *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993).

B. Finding the child in need of assistance. The father next contends there was insufficient evidence to find his daughter was in need of assistance. Although we are not bound by the juvenile court's findings, we give them weight because of the court's opportunity to hear and see the witnesses and evaluate their demeanor and credibility. See *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa Ct. App. 1995). From the child's statements and actions and the opinion of the experts we find clear and convincing evidence supports a finding the child is in need of assistance. Although the father continues to deny abusing his daughter, the evidence is that she has been abused and he is the only one she identified as the perpetrator.

C. Conflicts of interest. The father contends the juvenile court should have found the assistant county attorney and guardian ad litem had a conflict of interest because they both have some connection to the bank where the child's mother works.

The assistant county attorney told the court he did not know the mother before these proceedings, but could have spoken to her if she answered the telephone at the bank when he was calling to talk to his wife. He also said his wife and the mother do not see each other socially or have other than incidental contact at work. The guardian ad litem does collection work for the bank. He said he did not know the mother before these proceedings and had no conflict of interest representing the child. The juvenile court concluded the alleged

connections between the mother and the attorneys were too attenuated to present any conflict of interest.

The challenges do not involve lawyers representing two clients with potentially adverse interests. See Iowa Rs. Prof. Conduct 32:1.7, 1.8. The father argues there is an appearance of impropriety. From our review of the record “through the perspective of a reasonable layperson,” we agree there was no conflict of interest. *Doe v. Perry Cmty. Sch. Dist.*, 650 N.W.2d 594, 599 (Iowa 2002). We also conclude the alleged conflicts do not present even an appearance of impropriety warranting disqualification. See *id.* (“[T]he mere possibility of impropriety is insufficient to warrant disqualification.”).

D. Refusal to order services. The father requested family-centered services, family psychosocial evaluations, and sibling visitation; the juvenile court denied his requests. The court determined the services requested were inappropriate in part because this is not an intact family, the father needed to comply with court-ordered evaluation and treatment first, and the child could be harmed by another evaluation. The record also reveals there are some services provided through a pending juvenile case involving the father’s son, a half-sibling to the child in this case. We conclude the juvenile court properly refused the father’s requests.

E. Reasonable efforts. The father contends the State has not made reasonable efforts at reunification. The court considered the father’s request for certain services. None of the services he requested would have aided reunification efforts. The court properly evaluated the services requested before denying the father’s requests. The child has been “reunified” with her mother.

She is receiving therapy. The court ordered the father to undergo a psychosocial evaluation and any recommended treatment. The father consented to the no-contact order between himself and his daughter. He continues to deny he sexually abused his daughter. The continued denial precludes certain reunification efforts. See *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (noting the requirement that a parent acknowledge and recognize the abuse before meaningful change can occur). Under the circumstances before us, we find the State has made reasonable efforts at reunification.

AFFIRMED.