

IN THE COURT OF APPEALS OF IOWA

No. 7-114 / 06-2007
Filed February 28, 2007

IN THE INTEREST OF R.T.P., Minor Child,

T.P., Father,
Appellant.

Appeal from the Iowa District Court for Franklin County, Peter B. Newell,
District Associate Judge.

A father appeals from a permanency order prohibiting contact with his son.

REVERSED AND REMANDED.

Robert W. Brinton of Brinton, Bordwell & Johnson, Clarion, and Dani L.
Eisentrager of Eisentrager Law Office, Eagle Grove, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Brent Symens, County Attorney, for appellee.

Larry W. Johnson of Walters & Johnson, Iowa Falls, guardian ad litem for
minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Thomas appeals from the permanency order prohibiting contact with his son, Robert. Thomas contends the court improperly denied him visitation solely because he refuses to admit he sexually abused Robert. We reverse and remand.

Background Facts and Proceedings

Robert, born in 1996, was removed from his father's care in May of 2002 based on his allegations of sexual abuse by his father. After Robert's removal, the court granted Thomas supervised visitation. After Robert made additional allegations of sexual abuse and expressed fear of having contact with his father, all visitation was suspended in August of 2002 pending the dispositional hearing. After the dispositional hearing in September, the court found "that based on the nature of the allegations and statements made by this child, and based upon his fear and reluctance to meet with his father," Thomas should have no contact with Robert. The abuse investigation was completed in December and confirmed the abuse. Thomas has consistently denied abusing his son.

After permanency review hearings in 2003, 2004, and 2005, the court continued to prohibit contact between Thomas and Robert. It found reasonable efforts at reunification were made "considering the nature of the abuse" that occurred.

In its report to the court for the 2006 permanency review hearing, the Department of Human Services made the following observations:

Robert expressed wanting to see Tom to see if Tom's changed. He misses the farm and animals. He also misses his grandparents and other relatives. . . . Robert worries that Tom will retaliate against Brandi [Robert's sister] if Robert upsets Tom. . . . Robert

was very detailed about fears of visits with Tom. He's afraid that Tom will hurt him again. He also expressed concern that Tom may have a gun and would kill Robert. . . . Robert was visibly shaking while expressing these feelings.

However, it also observed:

[Robert's mother] has inquired whether consideration would be made to allow for some type of contact between Robert and Tom. She reported that she thought Robert should be allowed visits with his father. Her reasons consist that Tom has remarried and has a ten-year-old stepson living in the home with him. Robert's sister, Brandi, has been allowed supervised day visits every other weekend. It continues to be hard on Robert that his sister is allowed contact but he is not.

Robert was discharged from [therapy] early summer 2006. [His therapist] reports he is very stable.

Following the hearing, the court continued the prohibition on contact between Thomas and Robert. It concluded:

The court after having considered all the evidence in this matter does not believe that it would be appropriate to allow [Thomas] to have contact with [Robert]. [Thomas] continues to deny that he has sexually or physically abused his son. [Robert] continues to demonstrate fear of contact with his father while simultaneously expressing a desire to have contact.

The court believes that [Robert] cannot have contact with his father which would not cause emotional damage unless and until [Thomas] is willing to admit that he has sexually abused Robert.

Discussion

Thomas contends (1) denial of visitation is not in Robert's best interest, (2) the State has not made reasonable efforts to reunite him with Robert, and (3) denial of visitation is essentially a termination of his parental rights without due process.

Thomas asserts the court improperly conditioned his visitation with Robert on his admitting he sexually abused Robert. He argues there is no clear and convincing evidence Robert would be harmed by supervised visitation.

“Any permanency order may provide restrictions upon the contact between the child and the child’s parent or parents, consistent with the best interest of the child.” Iowa Code § 232.104(4) (2005). When determining what is best for a child, we consider both immediate and long-term interests. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We can consider a parent’s past performance, “for that performance may be indicative of the quality of the future care that parent is capable of providing.” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (citing *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

Thomas has exercised visitation with Robert’s younger sister without incident. Since his marriage, he has lived with his stepson, who is about Robert’s age, and there have been no allegations of impropriety. By all accounts, he is a good stepfather. Robert and his mother both want Robert to have a relationship with his father. We have allowed at least supervised visitation in similar cases, even where the parent denies the abuse. *See, e.g., In re S.W.*, 369 N.W.2d 278, 281 (Iowa Ct. App. 1991); *In re S.V.*, 395 N.W.2d 666, 668 (Iowa Ct. App. 1986). We believe prohibiting all contact between Robert and his father is unnecessarily restrictive and not in Robert’s interest. Supervised visitation can allow the development and growth of Robert’s relationship with his father while providing security from harm. We therefore reverse the order prohibiting contact between Thomas and Robert and remand to the juvenile court to order supervised visitation.

REVERSED AND REMANDED.

Mahan, J. concurs specially.

MAHAN, J. (concur specially)

I concur specially. Robert is still exhibiting physical manifestations of fear. Supervised visitation will provide security while allowing caseworkers to evaluate the benefits of such visitation.