

IN THE COURT OF APPEALS OF IOWA

No. 7-803 / 07-1608
Filed November 15, 2007

**IN THE INTEREST OF K.O.,
Minor Child,**

**R.A.O., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A father appeals from a juvenile court permanency order. **AFFIRMED.**

Molly Vakulskas Joly of Vakulskas Law Firm, P.C., Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Patrick Jennings, County Attorney, and Marlene Loftus, Assistant County Attorney, for appellee State.

Joseph Kertels of the Juvenile Law Center, Sioux City, for minor child.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

HUITINK, P.J.

R.O. appeals the juvenile court permanency order placing his daughter in another planned permanent living arrangement. He seeks a reversal of the permanency order and requests the immediate return of the child to his care.

I. Background Facts and Prior Proceedings

R.O.'s daughter, K.O., was born in November 1993. She is mildly mentally retarded and has a learning disability. R.O. obtained custody of K.O. in 1995 when K.O.'s mother was arrested on drug charges. K.O.'s mother has not been an active party in these proceedings and is not a party to this appeal.

The Iowa Department of Humans Services (DHS) became involved on April 28, 2006, when K.O.'s school reported allegations of physical abuse. K.O. and her thirteen-year-old friend were interviewed separately. K.O. told investigators that her father struck her and that she was afraid to go home. K.O. also said her father had touched her chest and buttocks over her clothing. K.O. went on to state that her father threatened to hit her if she told anyone about the abuse. Her friend, M.C., stated that R.O. had given her a back rub that made her feel uncomfortable. During this back rub, R.O. rubbed M.C.'s bare back and unhooked her brassiere.

K.O. was immediately placed in a shelter and ultimately placed in family foster care. At the conclusion of the investigation, DHS determined the sexual abuse claim was founded, but the claim of physical abuse was unfounded.

On August 16, 2006, the court adjudicated K.O. a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (d) (2005). K.O. was ordered to remain in family foster care.

K.O. was transferred to a second foster home due to ongoing behavioral problems. In May 2007 K.O. allegedly assaulted her second foster mother and was placed in the Cherokee Mental Health Institute. She was eventually placed in a third foster home.

On July 31, 2007, the juvenile court held a “shelter care review/dispositional review/permanency hearing” and a hearing on the father’s motion to modify the existing placement. During the hearing, the court held an in-camera discussion with K.O. whereby she recanted her prior allegations of sexual abuse and asked to be returned to her father. The district court issued an order continuing placement with DHS in another planned permanent living arrangement, such as family foster care or group care. The court also emphasized that K.O.’s therapy should continue on a *consistent* basis.

R.O. appeals, claiming (1) the court “erred in finding DHS made reasonable efforts to prevent or eliminate the need for the continued out-of-home placement” and (2) K.O.’s best interests would not be served by this placement.

II. Standard of Review

Our review is de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We give weight to the juvenile court’s findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g). The best interests of the child are paramount to our decision. *K.C.*, 660 N.W.2d at 32. There is a rebuttable presumption that parental custody serves the child’s best interests. *Id.*

III. Merits

R.O. contends DHS has not made reasonable efforts to prevent or eliminate the need for continued out-of-home placement. He points to the fact that K.O. has only had three sessions with her therapist from the middle of May 2007 to the end of July 2007. We will assume, *arguendo*, that the father preserved error on this issue.

R.O. and K.O. have received numerous services during the pendency of these proceedings including an intellectual assessment, supervised visitations, individual therapy sessions for both R.O. and K.O., a joint therapy session, and a psychosocial evaluation. Prior to May 2007, K.O.'s therapist met with her once a week. However, K.O.'s recent behavioral issues, her temporary placement at the Cherokee Mental Health Institute, and her subsequent assignment to a new foster home interrupted this therapy schedule. While the recent lack of participation in therapy is troubling, her consistent participation prior to the onset of these behavioral problems convinces this court that the State has made reasonable efforts to prevent or eliminate the need for continued out-of-home placement.

We also find that continued out-of-home placement is in K.O.'s best interests. During the fifteen months prior to the July 31, 2007 permanency hearing, K.O. maintained her sexual abuse allegations. She did not recant her allegations to her therapist and only retracted her allegations during the days leading up to the permanency hearing. We find no reason to overturn the court's permanency finding based upon this recent recantation. *Cf. State v. Tharp*, 372 N.W.2d 280, 282 (Iowa Ct. App. 1985) (holding that when a victim of sexual

abuse recants her testimony, we look upon that recantation with “the utmost suspicion”). We also find no reason to return K.O. to her father’s care based upon her recent behavioral problems.

At the permanency hearing, K.O.’s therapist recommended that she remain in foster family care at this time. Also, even though R.O.’s therapist has met with him on a weekly basis since December 2006, he only describes R.O.’s progress as “minimal.” The juvenile court concluded that “[t]here are still many issues which need to be dealt with before this court is comfortable returning [K.O.] to the care of her father.” Upon our de novo review, we agree with the juvenile court’s conclusion and find it is not in K.O.’s best interests to be returned to her father at this time. Accordingly, we affirm the juvenile court’s permanency order.

AFFIRMED.