

IN THE COURT OF APPEALS OF IOWA

No. 17-1563
Filed November 22, 2017

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

R.P. Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals a juvenile court order denying his request to have his child placed in relative care. **AFFIRMED.**

Daniel M. Northfield, Urbandale, for appellant father.

Thomas J. Miller, Attorney General, and Mary A. Triick, Assistant Attorney General, for appellee State.

Michael R. Sorci of Youth Law Center, Des Moines, guardian ad litem for minor child.

Considered by Danilson, C.J., and Doyle and Mullins, JJ.

MULLINS, Judge.

A father appeals a juvenile court order denying his request to have his child placed in relative care. He argues, because two appropriate relative placements were presented to the juvenile court and relative placement is less restrictive than non-relevant placement, the court should have granted his motion for a change in custody to relative care.

The mother of the child came to the attention of the Iowa Department of Human Services (DHS) in October 2016 upon reports of physical abuse by the father. The ensuing child-protective investigation revealed both parents had extensive substance-abuse histories and the mother's other two children were exposed to violence in the couple's relationship. The child in interest was born in February 2017. Less than a month later, the child was removed from the care of his mother upon concerns for her substance abuse, general instability, and failure to obtain domestic-violence and mental-health services. The father was incarcerated at the time of removal.

The child was initially placed with his paternal grandmother, V.G. Ten days later, the State moved to modify placement to foster care, noting "concerns regarding the paternal grandmother and her ability to support reunification and contact with the child's mother." The juvenile court granted the motion and ordered the child be placed in the custody of DHS for purposes of foster-care placement. In April, the child was adjudicated a child in need of assistance (CINA), foster-care placement was ordered to be continued, and a permanency goal of reunification with the mother was established.

At a dispositional hearing in June, the father voiced his objection to the continued placement of the child in foster care. At the hearing, he called his mother, V.G., and aunt, S.T., as witnesses to testify to their suitability as relative placements. In her testimony, V.G. downplayed DHS's reasoning for removing the child from her placement and merely testified she would be happy to, and is able, to care for the child. S.T.'s testimony was similarly limited to the mere assertion that she is able to care for the child. DHS reports to the court indicate V.G. should not be considered for placement and S.T. "is battling breast cancer and is not in the position to care for" the child. On the other hand, the record reveals the child's mother and his foster parent have an excellent relationship that supports the reunification goal and the child is doing very well in foster care. The juvenile court stated its intention on the record "to maintain the status quo on placement" and subsequently ordered the foster-care placement and goal toward reunification to be continued.

On September 7, the father filed a "motion to change custody to a relative." At a review hearing on September 14, the father repeated his request to have the child placed with one of his relatives. The court responded:

Our goal in this case is to return these children to the home from which they were removed, that is the mother. So I believe if [the child] stays where he is, that gives us the best chance to achieve that goal. So therefore because of that, I don't want to waste time right now, quite frankly, listening to testimony about moving this child to a paternal relative because I don't think it's going to move us closer towards what our goal is.

So therefore, the child will remain in family foster care and hopefully in the same home because I don't want this child to have more moves, which will affect him until we're able to hopefully achieve our goal, so that is why.

The court subsequently ordered that placement of the child remain in foster care, effectively denying the father's motion. As noted, the father appeals.

On appeal, the father contends V.G. and S.T. are suitable relative placements and, because relative placement is less restrictive than non-relevant placement, the court should have granted his motion for a change in custody to relative care. Our review of CINA proceedings is *de novo*. *In re J.S.*, 846 N.W.2d 36, 40 (Iowa 2014). Our primary concern is the best interests of the child. *Id.*

"It is true that 'chapter 232 favors relative placements over nonrelative placements,' but its ultimate goal 'is to "best serve the child's welfare."'” *In re M.M.*, No. 16-1685, 2016 WL 7395788, at *4 (Iowa Ct. App. Dec. 21, 2016) (quoting *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995)); see Iowa Code § 232.99(4) (2017) (“[T]he court shall make the least restrictive disposition appropriate considering all the circumstances of the case.”).

Here, the juvenile court determined, on three separate occasions, that foster-care placement would be the most supportive avenue for successfully attaining the case-plan goal of returning the child to his mother. The record provides us with no information to support a conclusion that relative placement, under the circumstances of this case, would be in the best interest of the child. The paternal grandmother's past conduct depicts her as a potential obstacle to the goal for reunification if the child is returned to her. See *M.M.*, 2016 WL 7395788, at *4 (“We hold no crystal ball, and to some extent, the determination must be made based upon past conduct.”). In addition, in weighing the grandmother and aunt's limited and generic testimony that they are able to care

for the child against the facts that the foster parent is willing and able to work toward the reunification goal and the child is doing very well in his current placement, we agree with the juvenile court that continued placement in foster care is in the best interests of the child. We therefore affirm the juvenile court's denial of the father's requests for relative placement.

AFFIRMED.