

**IN THE COURT OF APPEALS OF IOWA**

No. 0-152 / 09-1828  
Filed March 24, 2010

**IN THE INTEREST OF T.S.,  
Minor Child,**

**S.L.S., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother appeals the juvenile court's order removing the child from  
relative custody and placing the child in family foster care. **AFFIRMED.**

David Fiester, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant County  
Attorney, for appellee State.

Cynthia Finley, Cedar Rapids, for minor child.

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

**DOYLE, J.**

A mother appeals the juvenile court's order removing the child from relative custody and placing the child in family foster care. We affirm.

***I. Background Facts and Proceedings.***

S.S. is the mother and J.L. is the putative father of T.S., born in August 2009.<sup>1</sup> The mother was previously involved in child in need of assistance (CINA) proceedings with another child that ended in termination of her parental rights. While the mother was pregnant with T.S., she was arrested on charges of manufacturing and delivery of cocaine and ecstasy in Illinois.

T.S. came to the attention of the Iowa Department of Human Services (Department) in August 2009, after testing positive for marijuana at birth. The child's positive drug test resulted in a founded child abuse assessment against the mother. T.S. was voluntarily placed with T.S.'s grandfather, the mother's father.

On September 9, 2009, the State filed a petition alleging T.S. to be a CINA. An adjudicatory hearing was held on October 9, 2009. There, the mother stipulated that T.S. was a CINA as alleged in the State's petition. Following the hearing, the juvenile court entered an order adjudicating T.S. a CINA. The court's order directed the Department to prepare a social history report, including a home study for any proposed relative placement. The court ordered the mother to cooperate with drug testing and to complete a substance abuse evaluation.

---

<sup>1</sup> T.S.'s paternity has not been established through testing, but the mother identifies J.L. as the child's father. The putative father has not appealed the juvenile court's ruling placing T.S. in foster care.

On November 16, 2009, the Department prepared a social history report. The social history report stated that the mother had not yet received a substance abuse evaluation or participated in drug testing. The report also stated the mother had been sentenced on her charges in Illinois to participate in boot camp for 120 days, with her leaving on November 18, 2009. The report indicated that the mother was living with her father and T.S., along with the mother's brothers, and that it was anticipated that T.S. would continue to reside with the grandfather while the mother was at boot camp. The report stated the mother reported that one of her brothers had a history of criminal activities and substance abuse, but the brother was now sober. Additionally, the report noted the grandfather has a history of drug and alcohol abuse, including a founded child abuse assessment in 2003 for denial of critical care, in which the mother was the child victim, after it was determined the grandfather was drinking in the home and not providing care for his children. The report stated that the grandfather advised the Department he had been sober for the past six years and attended AA groups. The report stated that placement with the grandfather "appears to be a safe and appropriate placement option at this time."

Attached to the social history report was a home study of the grandfather's home, which recommended the home study be approved. The home study reported that two service providers had visited the home and that both had reported "the home environment to be safe and stable at the time of their visits. [T.S.] appeared to be healthy and well cared for." The summary of the home study provided:

At this time, [T.S.] appears to be in a safe and stable home environment where his needs can be met. [The grandfather] has cooperated with services being in the home . . . . There has been some difficulty with [one of the service providers] being able to connect with the family during safety checks although there have not been safety concerns when she has been in the home. [The grandfather] does have a history of alcohol abuse; however, it appears that it has been several years since any problems in the home. [The grandfather] does have a history of criminal charges although it appears that there have not been any problems since 2002. This seems to be consistent with the time frame with [the grandfather's] report that he last abused alcohol.

On November 19, 2009, a dispositional hearing was held. The mother did not appear at the hearing, as she had left for the boot camp program. At the hearing, the Department recommended that the child be placed with the Department for placement in foster care. The State explained:

We are recommending placement at this time based on concerns that [the mother's] brother is residing in the home. He has a recent charge of violating the drug tax stamp law. We are concerned that [the mother] is not incarcerated for 120 days. It's my understanding that she was providing a lot of the day-to-day care for [T.S.] while [T.S.] was in [the grandfather's] home, and obviously she is unavailable to do that at this time. And then for concurrent planning, we're not sure that placement with [the grandfather] would be a long-term placement for [T.S.], and so we believe foster placement would be better.

A service provider stated she had been doing regular drop-ins in the grandfather's home, but she was not seeing people regularly. She stated she had only had face-to-face contact with the family twice in the past three weeks, although she had told them she would be coming by. She stated she was unsure if it was a choice not to answer the door if somebody was not there.

The child's guardian ad litem (GAL) supported the recommendation that the child be placed in foster care. The GAL advised the court she had been trying to get in touch with the mother and the grandfather by phone numbers they

had provided for about two weeks, but was unable to reach them. The GAL stated:

This is almost déjà vu for the last case that we had with [the mother]. I talked to [the mother] at length . . . about how important it is to do things early in the case and to show progress early in the case. She has yet to do a substance abuse evaluation. . . . She's yet to provide a [sample for urinalysis testing], and it's been five weeks. The felony drug charges that [the mother's brother] has are just that, felony drug charges. He lives in the home and has consistently done so over the past several years that we've been involved in this. It seems like [the mother] is doing the same thing.

. . . [The mother] said that she was just going to do her substance abuse [evaluation] when she got back [from boot camp], and that's always been her attitude, "I'll just do it later. I'll do it sometime." [T.S.] is young and needs permanency.

As far as leaving [T.S.] in the grandfather's home, I believe that I've voiced my concerns about the home last time. [The grandfather] has traditionally been volatile and unpredictable, in my opinion, and he doesn't think much of me either. So I think for concurrent planning purposes, foster care placement would be in [T.S.'s] best interest at this point in time because the reason to place him in the home was to reunify him with [the mother], and that doesn't look like it's going to be possible because we're going to have to address permanency before she's released.

Following the hearing, the juvenile court entered a dispositional order finding that T.S. could not remain in the home and that reasonable efforts had been made to alleviate the need for out-of-home placement without success, noting the Department and GAL's recommendations. The court found that family foster care was the least restrictive placement in the child's best interests, and the court ordered that the child be placed in foster care.

The mother now appeals.

## ***II. Scope and Standards of Review.***

Our review of child in need of assistance proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law

and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Our ultimate concern is with the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006).

### ***III. Discussion.***

In enacting chapter 232 the legislature enunciated the purposes of the chapter in providing it

shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance, and control that *will best serve the child's welfare* and the best interest of the State.

Iowa Code § 232.1 (2009) (emphasis added). Following a dispositional hearing, the juvenile court must make "the least restrictive disposition appropriate considering all the circumstances of the case." Iowa Code § 232.99(4). The alternative dispositions "are listed in sections 232.100 to 232.102 in order from least to most restrictive." *Id.* "Whenever possible, the court should permit the child to remain at home with the child's parent, guardian, or custodian." *Id.* § 232.102(5)(a). If continued placement with the parent, guardian, or custodian is not possible, the court may enter an order transferring the legal custody of the child for purposes of placement to:

- (a) A parent who does not have physical care of the child, other relative, or other suitable person.
- (b) A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- (c) The department of human services.

*Id.* § 232.102(1). Our supreme court has stated that “[t]he home of a relative is considered less restrictive than placement in a private agency, facility or institution or placement with the department of human services. Thus, chapter 232 favors relative placements over nonrelative placements.” *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) (citations omitted).

Although a close call, we agree with the juvenile court that placing T.S. in family foster care was the least restrictive disposition appropriate considering all the circumstances of the case. While it appears the mother was unaware the Department would recommend placement in family foster care, we note that there is no evidence that the mother’s CINA adjudication stipulation was premised upon the child’s placement with the grandfather or that the Department gave any assurances to the mother that it would recommend such a placement before she left for boot camp. Here, despite the social report’s finding, only a few days before the dispositional hearing, that the grandfather would be a suitable caregiver, circumstances in the grandfather’s household were such that the Department no longer considered the home to be appropriate for the child’s placement. The mother’s brother, who was living in the house and whom the mother had previously stated was sober, had a recent charge of violating the drug tax stamp law. The Department found the grandfather had been uncooperative in their drop-ins, and the mother and grandfather both could not be reached at the phone numbers they had provided to the service providers. A child’s safety and need for a permanent home are the primary concerns in determining the child’s best interests. *Id.* at 801 (Cady, J., concurring specially). In considering what will best serve the child’s welfare and all the circumstances

of the case, we agree with the juvenile court's order placing T.S. in family foster care. We accordingly affirm the juvenile court's dispositional order.

**AFFIRMED.**