

IN THE COURT OF APPEALS OF IOWA

No. 0-193 / 10-0155

Filed April 21, 2010

**IN THE INTEREST OF R.A.-K.,
Minor Child,**

R.A., Mother,
Appellant.

Appeal from the Iowa District Court for Hardin County, Kim M. Riley,
District Associate Judge.

A mother appeals from a permanency order placing custody of her child
with the child's father. **AFFIRMED.**

Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for
appellant mother.

Jennifer Steffens of Steffens & Grife, P.C., Marshalltown, for appellee
father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Randall J. Tilton, County Attorney for appellee State.

Larry Johnson, Iowa Falls, for the minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) on February 18, 2009, when Richard, who was thirteen at the time, assaulted his mother. Following the incident, Richard was placed in juvenile detention. He was released from detention on February 24, 2009, and placed in a youth shelter. Richard's parents, Ranae and Keith, divorced approximately ten years before this case began. Ranae raised Richard, and Keith had little to no contact with Richard until he became involved in the present case.

On March 10, 2009, the State filed a petition to adjudicate Richard as a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2), 232.2(6)(f), and 232.2(6)(n) (2009). On March 24, 2009, the juvenile court ordered that all contact between Richard and Ranae be supervised after Ranae encouraged Richard to run away from his placement.

At the adjudicatory hearing on April 7, 2009, the parties stipulated to adjudication of Richard as a child in need of assistance pursuant to Iowa Code section 232.2(6)(f). The juvenile court found that continued shelter placement of the child pending dispositional hearing was in his best interests. The juvenile court ordered a home study for Keith, a mental health evaluation for Ranae, and a psychiatric evaluation for Richard.

Richard has a long history of behavioral problems and physical aggression toward his mother and maternal grandmother. His psychiatric evaluation resulted in a diagnosis of intermittent explosive disorder and mild mental retardation.

Richard also has a history of attention deficit/hyperactivity disorder and learning disorder. Richard's behavior and reading skills improved greatly while he was in the shelter.

Ranae completed a mental health evaluation and was given a provisional diagnosis of psychotic disorder and borderline to mild mental retardation. The doctor who examined Ranae noted, "Insight is probably marginal. Judgment is poor."

Keith was cooperative with the home study and expressed a desire to have Richard live with him. Keith wanted to be a part of Richard's life and began to develop a relationship with him again. Because of Richard and Keith's lack of recent contact, the author of a home study completed April 23, 2009, did not feel that immediate placement in Keith's home would be in Richard's best interests. She recommended that the court utilize a transition plan to place Richard gradually into Keith's care.

After a CINA dispositional hearing, on June 9, 2009, the juvenile court noted the recommendation that Richard not be placed with his father immediately and concluded that it would be contrary to Richard's welfare to return to his mother's home. Therefore, the court continued custody of Richard with DHS for placement in group care.

On June 10, 2009, Richard was transferred to Four Oaks. On June 17, Richard ran away from Four Oaks, but was returned on June 18. In August, Four Oaks determined that Ranae could have semi-supervised visits with Richard, and in September, Ranae began unsupervised visits. Both parents maintained

regular contact with Richard and both expressed a desire to have Richard's physical care upon his discharge from Four Oaks.

After a CINA review hearing on November 24, 2009, the juvenile court stated, "[I]t would be contrary to the child's welfare to be returned to either parent at this time." The court found that Richard would benefit from completing the program at Four Oaks. The court also ordered that both Keith and Ranae complete a parenting assessment.

Dr. Patricia Gilbaugh, a forensic social worker at the Grace C. Mae Advocate Center, completed the parenting assessment. She found that "Ranae's overall mental health is adequate for parenting Richard." She further found that neither parent was a safety risk to Richard. Gilbaugh reported, "Keith is emotionally and developmentally more healthy than Ranae is." However, she believed that Ranae was "medically healthier than Keith."¹ Gilbaugh reported that Richard appeared more anxious, socially delayed, demanding, and aggressive with Ranae than with Keith. She also reported that she believed "Richard will struggle to live with Ranae full-time and be able to maintain control over his emotions in her home." She further stated, "I believe [Richard] may still be a risk to [Ranae]." Ultimately, Gilbaugh concluded, "I do not believe Richard would experience further harm from living with Ranae. I do not believe Richard would experience harm on any level from living with his father." Because Gilbaugh was not asked to make a recommendation for placement, she declined to do so.

¹ Keith was diagnosed with chronic obstructive pulmonary disease, is legally blind in one eye, and has a heart condition that necessitated open heart surgery for which he continues to be under supervision.

In a report to the court on January 8, 2010, the DHS case worker assigned to this case, Kelli Cranston, reported, "I am concerned that Ranae has ongoing mental health issues that need to be addressed. However, she refuses to seek treatment. Ranae has had ongoing paranoid and delusional thoughts." Cranston reported that, though Keith had been absent from Richard's life for several years, they had been able to develop a relationship again. She further noted that Keith "set limits for Richard when he is at home and does hold him accountable." Cranston noted that Ranae, on the other hand, does not hold Richard accountable and minimizes his behaviors. Cranston recommended that Richard's care be placed with Keith because "Richard is in need of a structured home environment with consistent rules and consequences."

Christal Moeller, a care manager with Four Oaks, reported that Richard should be transitioned "to one of his parent's home" but noted, "[I]t is crucial that for Richard to continue to move forward he must have stability, some structure and firm limits understanding that he will have consequences for his behaviors." Moeller also reported that Keith "has a strong set of values and expectations for Richard," that Richard transitions well after his visits with Keith, and that when Richard is with Keith, "he is information seeking and seems to be able to reason and process on his own, as [Keith] will challenge him to do so." Moeller reported that Ranae "tends to be over accommodating to Richard unnecessarily," leaving Richard with the ability to take advantage of her. She further noted that "Ranae has not been challenging to Richard," does not have a specific set of expectations or routine for Richard, and Richard has a more difficult time transitioning after visits with Ranae.

At the time of the permanency hearing on January 12, 2010, Richard had completed the treatment program at Four Oaks and was ready to be discharged to one of his parents. The juvenile court ordered that custody of Richard be transferred from Ranae to Keith pursuant to Iowa Code section 232.104(2)(d)(2). The juvenile court found that “there is greater likelihood that Richard will suffer adjudicatory harm if he is returned to his mother,” and therefore, “Richard cannot be returned to his mother’s home at this time because it is not in his best interests.” The juvenile court based its decision on Ranae’s minimization of Richard’s actions, including the assault that brought this case to the attention of DHS; Ranae’s unwillingness to provide treatment to cure or alleviate Richard’s mental health problems; Ranae’s paranoid thoughts and delusions, which providers noted transferred to Richard; and Richard’s lack of respect for Ranae as a parent.

Ranae now appeals from the permanency order, arguing the juvenile court erred in placing Richard with Keith, the noncustodial parent, on a permanent basis.

II. Standard of Review

We review a permanency order *de novo*. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review both the facts and the law and adjudicate rights anew. *Id.* Although we give weight to the juvenile court’s findings of fact, we are not bound by them. *Id.* “The best interests of the child are paramount to our decision.” *Id.*

III. Transfer of Custody

Before transferring sole custody of a child from one parent to another pursuant to Iowa Code section 232.104(2)(d)(2), the State must present convincing evidence that: (1) a termination of the parent-child relationship would not be in the best interests of the child; (2) services were offered to the child's family to correct the situation that led to the child's removal from the home; and (3) the child cannot be returned to the child's home. Iowa Code § 232.104(3). The first and governing consideration of the court is the best interests of the child. Iowa R. App. P. 6.904(3)(o). Ranae contends the State did not prove that Richard could not be returned to her home. After a de novo review of the record, we agree with the juvenile court's decision that Richard cannot be returned to Ranae's home.

Throughout this case, Ranae refused to recognize Richard's aggressive and abusive behavior. Though it was this behavior that led to Richard's removal from her home and adjudication as a CINA, Ranae minimized Richard's actions and blamed Richard's physicians for his behavior. It is essential in meeting children's needs that parents recognize and acknowledge abuse that has occurred, as meaningful change cannot occur without this recognition. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995). Ranae's refusal to recognize and remedy Richard's aggressive behavior leads this court to believe Richard's strong history of aggression and abuse will continue to exist if he is returned to Ranae's custody.

Further, we agree with the juvenile court that Ranae does not and will not provide Richard with treatment and services that he needs. Ranae encouraged

Richard to run away from treatment facilities on multiple occasions. Care providers unanimously reported that Richard does not respect Ranae as a parental figure and consistently exhibits unhealthy behavior when he is with Ranae, but not when he is with Keith. Though Dr. Gilbaugh declined to make a placement recommendation and reported that Richard would not experience further harm from living with Ranae, she also reported, "Richard will struggle to live with Ranae full-time and be able to maintain control over his emotions in her home." Dr. Gilbaugh also reported that Richard may still be a risk to Ranae.

In a report authored on November 23, 2009, a care manager at Four Oaks noted, "Richard's behavior upon returning from [Ranae's] home has progressively gotten worse." Nothing in the record suggests that Ranae has taken steps to acknowledge or correct the problems that led to Richard's removal and adjudication as a CINA. We may look at the parents' past performance of caring for their child, as their past performance is indicative of their future care. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We find that Ranae's behavior indicates that she will not do what is necessary to provide for Richard's overall mental health.

The record also supports a finding that Ranae has mental health issues that she refuses to address. Several care providers noted that Ranae's paranoid thoughts and delusions transfer to Richard. Instead of recognizing these issues and remedying them, Ranae declared that nearly every individual involved in this case was lying, including individuals who worked at Richard's school. Ranae's inability or unwillingness to recognize and address her and Richard's needs supports a finding that Richard cannot be returned to her home.

Care providers reported that Richard needs stability and structure in his life. All providers agreed that Ranae does not provide this stability or structure. Keith provides Richard with the stability that he needs to remedy his behavioral and social problems.

We disagree with Ranae's argument that the juvenile court simply chose the better of two homes. Rather, we find that Richard cannot be returned to Ranae's home for a multitude of reasons, primarily Ranae's inability or unwillingness to address any of the issues involved in the case. Using Ranae's current performance as a predictor of future performance, we believe there is convincing evidence that Richard cannot be returned to Ranae's care.

AFFIRMED.