

IN THE COURT OF APPEALS OF IOWA

No. 0-765 / 10-1414
Filed November 10, 2010

**IN THE INTEREST OF A.M.S.,
Minor Child,**

**S.M.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals the juvenile court's denial of her motion to dismiss a child-in-need-of-assistance action. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for mother.

Mary Kennedy, Waterloo, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Steven J. Halbach and Kathleen Hahn, Assistant County Attorneys, for appellee State.

Kelly Smith, Waterloo, for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

The juvenile court denied a mother's motion to dismiss a child-in-need-of-assistance action. The mother appeals.

The pertinent facts are as follows. A child, born in 2002, was adjudicated in need of assistance based on her parents' drug use. The juvenile court placed the child in the custody of her paternal grandmother and, in a permanency order, established a guardianship with the grandmother. The child's guardian ad litem subsequently sought to relieve the juvenile court of further supervision responsibilities by asking for concurrent jurisdiction to litigate guardianship issues in the district court.¹ The juvenile court granted the guardian ad litem's request. The district court proceeded to establish a guardianship with the grandmother, the terms of which ultimately mirrored the terms of the juvenile court's permanency order.

Meanwhile, the juvenile court relieved the Department of Human Services of providing services to the child, precipitating the mother's motion to dismiss the juvenile court matter. At a hearing on the motion, the child's grandmother stated she did not require further services from the department. The juvenile court nonetheless denied the motion to dismiss, reasoning that it had been involved with the family through the "whole process" and juvenile court supervision was still warranted.

¹ At the hearing on the motion to dismiss, the juvenile court stated the mother requested the district court guardianship. The juvenile court's permanency order, however, states the guardian ad litem requested the district court guardianship. In the end, it matters little who made the request. The important point is that the request was granted.

On appeal, the mother contends the district court guardianship serves the same purpose as the juvenile court's permanency order, rendering continued juvenile court supervision unnecessary. While this argument is appealing at first blush, we believe the decision to leave the child-in-need-of-assistance action open was a discretionary call on the part of the juvenile court.

A recent statutory amendment elucidates the issue. That amendment states the juvenile court “*may* close the child in need of assistance case by transferring jurisdiction over the child's guardianship to the probate court.” 2010 Iowa Acts ch. 1143, § 1 (amending Iowa Code section 232.104(7) (2009)) (emphasis added). Ordinarily, “*may*” confers discretion. *State ex rel. Wright v. Iowa State Bd. of Health*, 233 Iowa 872, 875, 10 N.W.2d 561, 563 (1943). While there are exceptions, see *Iowa Nat'l Indus. Loan Co. v. Iowa State Dep't of Revenue*, 224 N.W.2d 437, 442 (Iowa 1974), the mandatory rather than permissive meaning “will never be ascribed to [“*may*”] unless it is necessary to give effect to the clear policy and intention of the legislature.” *Wright*, 233 Iowa at 875, 10 N.W.2d at 563.

In section 232.104(7), the legislature conveyed a clear policy and intention to use the permissive form of “*may*.” In subsection (a) of section 232.104(7), the legislature stated the juvenile court “*shall*” retain jurisdiction following “the entry of a permanency order which places a child in the custody or guardianship of another person or agency” and “annually review the order to ascertain whether the best interest of the child is being served.” In subsection (b), quoted above, the legislature stated the juvenile court “*may*” close its action and transfer

jurisdiction to the probate court. Read together, these subsections leave it to the juvenile court to decide whether and when to close a juvenile court proceeding.

The juvenile court here believed it was in the best position to ensure that the guardianship was meeting the child's needs. The court also reasoned that annual review hearings were "a pretty small price to pay" in service of the child's best interests. While the court could have concluded otherwise and left it to the district court to oversee future events, we believe the court acted well within its statutorily-conferred discretion in retaining jurisdiction of this matter. For that reason, we affirm the court's denial of the mother's motion to dismiss.

AFFIRMED.