

IN THE COURT OF APPEALS OF IOWA

No. 1-794 / 11-1196
Filed November 9, 2011

**IN THE INTEREST OF C.B., J.B., and J.B.,
Minor Children,**

**K.B., Grandmother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

The maternal grandmother appeals from the juvenile court order placing guardianship and custody of the three children at issue with the Iowa Department of Human Services. **AFFIRMED.**

Robert J. Pierson, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Jayme Kirsch, Assistant County Attorney, for appellee State.

Marchelle Denker of Juvenile Law Center, Sioux City, for minor children.

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

EISENHAUER, J.

The maternal grandmother appeals from the juvenile court post-termination of parental rights order placing guardianship and custody of the three children at issue with the Iowa Department of Human Services (DHS). She seeks to have the children placed with her. We review her claim de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995).

The children are eight, six, and five years of age. They were in the custody of their maternal grandmother most of their lives after their mother transferred custody to her mother. They have little contact with their parents. In October 2009, the children came to the attention of the DHS following allegations the grandparents were seen smoking methamphetamine and yelling inappropriate things at the children. The grandmother admitted she had relapsed on cocaine.

The children were adjudicated in need of assistance in January 2010 based on their parents' abandonment and their grandmother's drug use. The petition to terminate parental rights was filed in February 2011. The children were removed from the grandmother's care the same month after she left them for several days in the care of their mother, whom she acknowledged is an inappropriate caretaker. In early March 2011 the court, after a hearing, concluded it would be contrary to the welfare of the children to return them to their grandmother and continued their placement in family foster care.

Following a hearing in March 2011, the parents' rights were terminated. Custody of the children was continued with the DHS for placement in family foster care with the grandmother to receive two weekly unsupervised visitations.

Hearing on final resolution of the guardianship and custody issues under Iowa Code section 232.117(3) (2011) was scheduled for July 2011. In April 2011, the State filed a motion to modify the dispositional order to cease weekly visitation following the grandmother's incarceration and instead grant visitation at the DHS's discretion. The motion was granted.

A post-termination/permanency review hearing was held in July 2011. The State and guardian ad litem recommended custody be placed with the DHS for purposes of adoption pursuant to Iowa Code section 232.117(3)(a), while the grandmother sought placement with her pursuant to section 232.117(3)(c). Following a hearing, juvenile court ordered guardianship and custody of the children placed with the DHS for adoptive placement.

Under Iowa Code section 232.117(3), following the termination of parental rights, the juvenile court may transfer the guardianship and custody of a child to one of the following:

- a. The department of human services.
- 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. A parent who does not have physical care of the child, other relative, or other suitable person.

As always, our primary concern is the best interests of the children. *See In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). The grandmother seeks custody of the children, arguing she is a suitable caretaker and the children's best interests are served by placing them in her care.

We agree with the juvenile court's determination guardianship and custody should be placed with the DHS. The grandmother contends the evidence proves

she would be a suitable placement for the children and the court based its decision on “one incident of poor judgment” when she left the children in the care of their mother for several days in February 2011. The problem with her argument is it assumes the order was based solely on one incident rather than a pattern of poor judgment and neglect. The grandmother has ongoing substance abuse issues and tested positive for illegal substances as recently as February 21, 2011. The children have spoken of watching their grandmother use drugs in their presence. The grandmother also has unaddressed issues with gambling; she used money needed to support the children to play bingo. She has allowed the mother to care for the children on numerous occasions in spite of concerns about her ability to provide appropriate care. She also left the children alone on many occasions, and the children have spoken of finding a gun in the house, taking baths alone, trying to prepare their own dinner, and being frightened. The children all stated they do not feel safe in their grandmother’s care. The children are doing well in their foster home.

Because the evidence shows the grandmother cannot safely care for the children and because it is in their best interests to be placed in the custody of the DHS for the purposes of adoptive placement, we affirm the juvenile court’s order.

AFFIRMED.