

IN THE COURT OF APPEALS OF IOWA

No. 2-1131 / 12-1843
Filed January 9, 2013

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

**B.S. JR., Father,
Appellant.**

Appeal from the Iowa District Court for Buchanan County, Alan D. Allbee,
Associate Juvenile Judge.

A father appeals from the juvenile court's order continuing foster family care for his child after a child in need of assistance review hearing. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant father.

Thomas J. Miller, Attorney General, Julia S. Kim, Assistant Attorney General, and Shawn M. Harden, County Attorney, for appellee State.

Steven Ristvedt, of Ristvedt Law Offices, P.C. Independence, for appellee mother.

Linnea Nicol of the Waterloo Juvenile Public Defender's Office, Waterloo, attorney for minor child, and Kelly Smith of Banning & Smith Law Office, Waterloo, guardian ad litem for minor child.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

A father, B.S., appeals from a child in need of assistance (CINA) review order, contending the juvenile court erred in not returning his child, G.S., to his care, and in failing to direct the department of human services (DHS) to allow him unsupervised visits with G.S.¹ We affirm, finding the court properly continued the child's placement in foster family care, and that the court did not err in declining to direct DHS to move to unsupervised visits.

I. Facts and Proceedings

G.S. most recently came to the attention of DHS in May of 2011 when his younger sibling ingested medication left accessible to the children. Five prior founded reports of denial of critical care had been made regarding the children. G.S. was found to suffer from lead poisoning at the age of three. In February of 2011, the children's home was found unsafe and unsanitary. G.S.'s two younger siblings were removed from the home and placed in foster care the following May. That August, the two younger children were removed from their parents' custody.²

B.S. participated in services offered by DHS, including a psychological evaluation. He was diagnosed with attention deficit hyperactive disorder, alcohol and cannabis dependence, and borderline intelligence. B.S. has an extensive criminal background, is unemployed, and was homeless at the time of the CINA review hearing.

¹ G.S.'s mother does not appeal.

² B.S. is not the father of these two other children.

In May of 2011, G.S. was moved into B.S.'s home due to concerns with the mother's ability to keep a clean, safe home. G.S. moved back to his mother's home in June 2011, after the problem was abated. There were also concerns about G.S. living with B.S. B.S. would make harsh comments to G.S., using mental intimidation, and exhibited limited cognitive ability to handle occasional outbursts by G.S. B.S. was involved in play therapy with G.S. but stopped attending after he thought the therapist accused him of hitting G.S. The therapist determined G.S. was not ready for placement with B.S. because the child was very sensitive about negative comments by B.S. The therapist believed much work would have to be done to repair the relationship. In addition, DHS was concerned about attempts by B.S. to prevent G.S.'s mother from obtaining his custody. Evaluation of B.S. showed him to have unrealistic expectations of children, to be non-empathetic, and to have a strict, rigid, and authoritarian parenting style.

In November of 2011, G.S. and his siblings were adjudicated CINA. Custody of G.S. remained with his mother, subject to visitation by B.S. This order was modified in February 2012, with custody of G.S. transferred to DHS for purposes of family foster care, subject to visitation by G.S.'s parents. G.S. continued to attend play therapy to help with his oppositional defiant disorder and anger issues. The court outlined B.S.'s efforts in seeking out and attending services provided by DHS in its modification order, noting his progress towards correcting his behaviors. It concluded, however, that G.S. was not yet ready to reside with B.S. full time.

B.S. continued to receive services, and was permitted unsupervised visits with G.S. B.S. appeared to have made improvements until having outbursts again at a family team meeting and at G.S.'s therapy sessions. DHS then required supervised visits once again. At the July 2012 dispositional review hearing, the court noted there were hopes for the child to move back to unsupervised and hopefully overnight visits. However, the court noted B.S.'s ongoing cognitive defects and continued lack of empathy, self-awareness, and conflict resolution skills.

After this review hearing, B.S. continued to struggle with outbursts at family team meetings and parent skill sessions, and meetings were moved to a public library in hopes B.S. would control his temper. He denied needing any of the parenting skills presented to him in DHS classes. B.S. also stopped attending G.S.'s play sessions because his presence was found by the therapist to be counter-productive. At these sessions, B.S. was observed to minimize G.S.'s feelings and draw focus from the child. B.S. also moved out of his apartment and was living temporarily with an acquaintance at the time of the October 2012 mandatory review hearing. The court concluded B.S. had not made sufficient progress to merit unsupervised visitation or custody, and he had no home for G.S. to return to. The court continued the arrangement set forth in the July 2012 dispositional review order for foster family care. B.S. appeals from this order, arguing custody of G.S. should have been transferred to him and that the court should have ordered DHS to allow unsupervised visitation.

II. Analysis

We review CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We give weight to the factual findings of the district court, but are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our paramount concern is the best interests of the child. *Id.*

B.S. first contends the court erred in failing to return G.S. to his care. He argues there is insufficient evidence to support the court's decision. While family reunification is an important part of CINA proceedings, we must always ask what is best for the child. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (noting the shift in focus of reasonable efforts requirement from strict family preservation to best interests of the child as paramount).

Here, the court properly declined to return G.S. to B.S.'s care. B.S. did not have a home for the child to be returned to, his presence at therapy sessions was hindering G.S.'s progress, and his parenting abilities in his visits with G.S. were slipping. Visitation had recently moved to a library for B.S. to work on his behavior in visits. The district court properly noted that given B.S.'s slipping progress and homelessness, returning G.S. to his custody would not be appropriate at the time of the hearing. We must consider both the mental disability of the parent and the special needs of the child in determining what arrangement is best for the child. *In re I.L.G.R.*, 433 N.W.2d 681, 691 (Iowa 1988). Given B.S.'s lack of progress in services and G.S.'s own struggles, we agree with the district court that returning G.S. to B.S.'s care is inappropriate at this time.

B.S. next contends the court erred in failing to order unsupervised visits with G.S. At a dispositional review hearing, the court's role is to "determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted." Iowa Code § 232.102(9) (2011). Our supreme court has interpreted this code section narrowly as allowing three specific actions: returning the child home, extending the current placement, or commencing termination proceedings. *K.B.*, 753 N.W.2d at 16. However, the court may consider more with consent by the parent to hear that particular issue. *Id.*

B.S. urged the court to address this issue at the time of the hearing. Therefore, it was appropriately addressed by the juvenile court. *See id.* Here again, the crux of our inquiry is the best interests of the child. *See C.B.*, 611 N.W.2d at 493; *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996) (noting the nature of visitation is controlled by the best interests of the child). This includes the extent of reasonable efforts made by DHS. *C.B.*, 611 N.W.2d at 493. Previously, G.S. resided with B.S., and after his removal B.S. was allowed unsupervised visits with G.S. These reunification efforts were unsuccessful. G.S. and B.S. both have issues they are struggling to address. G.S. is facing challenges in therapy and the therapist has found B.S.'s presence at appointments. does not help. B.S. has struggled with progressing in his parenting skill sessions and managing his social skills during visitation. We

agree with the district court that unsupervised visits between G.S. and B.S. are not warranted at this time.

AFFIRMED.