

IN THE COURT OF APPEALS OF IOWA

No. 2-219 / 12-0005
Filed March 28, 2012

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

V.V., Mother,
Appellant,

J.E., Father of C.E.,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother and father appeal separately from the permanency order that continued the children's placement with J.V.'s father. **AFFIRMED ON BOTH APPEALS.**

Christopher Kemp of Kemp Sease & Dyer, Des Moines, for appellant mother.

John Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant father of C.E.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee State.

M. Kathryn Miller, Juvenile Public Defender, Des Moines, for minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

The mother of J.V. and C.E. and the father of C.E. appeal separately from the permanency order entered by the juvenile court. The order continued the children's placement with J.V.'s father. The mother contends the court erred in transferring sole custody of J.V. to his father and appointing J.V.'s father as C.E.'s guardian. In the alternative, the mother contends the court should have continued the status quo for six months because she was making significant progress in achieving reunification with the children. The father of C.E. contends the court erred in not following the placement recommendation of the social worker—returning the children to their mother. We affirm on both appeals.

J.V., born in 2004, and C.E., born in 2006, came to the attention of the Iowa Department of Human Services in November 2010 based on concerns the mother was using illegal drugs. The State filed a petition to have the children adjudicated children in need of assistance (CINA) in December. At that time, the father of C.E. was incarcerated. In January 2011 the children's attorney and guardian ad litem sought the children's removal from the mother's care after J.V. reported the mother's boyfriend, a registered sex offender, sexually abused him. The court ordered the children's removal and placed them in the temporary custody of J.V.'s father. The children were adjudicated CINA in February. C.E.'s father was released on parole later that month.

The March dispositional order continued the children's placement with J.V.'s father and ordered the mother to address her mental health and substance abuse issues, to be open and honest with service providers, and to participate fully with services.

C.E.'s father was arrested for operating while intoxicated, third offense, in July. He pleaded guilty and was sentenced to five years in prison to be served concurrently with his parole revocation. He anticipates a release in 2014.

Review hearings in May and September showed the mother was cooperating with services, addressing substance abuse concerns, attending therapy, participating in visitation, and demonstrating age-appropriate parenting. In November the mother began having overnight visitation with the children. Concurrent jurisdiction was granted to permit the district court to consider J.V.'s father's request for custody of J.V.

A permanency hearing took place over two days in December. The department recommended returning the children to the mother's care. The guardian ad litem resisted the recommendation, seeking to have J.V. placed in his father's sole custody and to have J.V.'s father appointed the guardian of C.E. The children's therapist testified how the children had progressed while in the care of J.V.'s father and how their behavior had deteriorated when visitation was increased. She further testified about the children's bond with each other, their need for stability and security, and the importance of keeping them together.

The court found the children could not be returned to the mother's care, they needed a secure and permanent placement, their emotional and physical well-being required permanency, and the children were "not safe under their mother's sole supervision and the children know this." The court entered a permanency order pursuant to Iowa Code section 232.104 (2011) placing J.V. in his father's sole custody and guardianship and custody of C.E. with J.V.'s father and his wife.

Our review of permanency orders is de novo. *In re T.D.E.*, 796 N.W.2d 447, 453 (Iowa Ct. App. 2011). Although we give weight to the court's factual findings, we are not bound by them. *Id.* Our paramount consideration is the best interests of the child. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003).

Mother. The mother contends the court erred in placing J.V. in his father's sole custody and appointing J.V.'s father guardian of C.E. She points to the caseworker's testimony there were no safety concerns or concerns the mother would not be able to meet the children's needs. She asserts the overnight visitations went well—she had had five or six by the time of the hearings—and she had ended her relationship with C.E.'s father and with the sex offender who abused J.V. Although she was living with her parents at the time of the permanency hearing, she was employed and seeking suitable housing she could afford.

The mother's arguments focus mainly on the progress she has made. The court's findings and conclusions recognized the mother's progress but gave primary consideration to the children's best interests. The children want to see their maternal grandparents and their mother, but they do not want to stay overnight. The increased visitation has caused increased behavior problems. C.E.'s father was not a placement option at the time of the hearing because he was incarcerated and likely would remain so for some time. The children share a strong, caring bond with each other, so separating them would cause harm. Although the mother had made progress, she was not in a position to have the children returned to her care.

The court found termination of the mother's parental rights was not in the children's best interests, services were offered to correct the situation that led to the children's removal, and the children could not be returned home. See Iowa Code § 232.104(3). Pursuant to those findings, the court transferred sole custody of J.V. "from one parent to another parent," see *id.* § 232.104(2)(d)(2), and transferred guardianship and custody of C.E. to "a suitable person." See *id.* § 232.104(2)(d)(1). We affirm on this issue.

The mother also contends the court erred in not continuing placement for six months "as she was making significant progress in achieving the permanency goal." Section 232.104(2)(b) gives the court the option to give a parent an additional six months to work toward reunification. To continue placement of the children for six months, the court must "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child[ren] from the child[ren]'s home will no longer exist" after six months. *Id.* § 232.104(2)(b).

Although the mother had made great progress in dealing with her substance abuse and she was participating in therapy, the court expressed great concern the mother had not been working proactively with the children to deal with relationships, family issues, and past trauma. The mother did not have suitable housing for the children. We agree with the court's decision not to force the children to wait an additional six months for permanency. The permanency order best provides for their safety, security, stability, and long-term development. We affirm on this issue.

Father. C.E.'s father contends the court erred in not following the social worker's recommendation that C.E. be placed with the mother. He argues the mother had complied with service provider requests, had completed substance abuse treatment and provided clean urinalyses for nearly a year, and was gaining insight into her substance abuse and overcoming it.

The court concluded, and we agree, the children could not be returned to their mother's care at the time of the permanency hearing. Although J.V.'s father and stepmother are not related to C.E., we, like the court give great weight to the importance of keeping the children together—especially because they share a strong, caring bond and would suffer emotional harm if separated. See *In re A.M.S.*, 419 N.W.2d, 723, 734 (Iowa 1988) (noting siblings should not be separated without “good and compelling” reasons). In the case before us, the children could not be returned to the mother, and there are no good and compelling reasons to separate them. J.V.'s father and stepmother have cared for C.E. just as they have J.V. C.E. has benefitted from being in their care and from being placed with her sibling. We affirm on this issue.

AFFIRMED ON BOTH APPEALS.