

IN THE COURT OF APPEALS OF IOWA

No. 2-383 / 12-0517
Filed June 13, 2012

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

**N.M., Mother,
Appellant.**

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

A mother appeals from the permanency order establishing the foster
father as the child's guardian and transferring jurisdiction to probate.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Alan Heavens, County Attorney, and Natalia Blaskovich, Assistant
County Attorney, for appellee State.

David Baumgartner, Strawberry Point, for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

A mother appeals from the modification of a permanency order. She contends the court erred in changing the child's placement from another planned permanent living arrangement to guardianship with the child's foster father and transferring jurisdiction to probate. We affirm.

I. Background Facts and Proceedings.

The child, born in 1996, as well as four other children in the family, was adjudicated a child in need of assistance in March 2005. The children remained with their mother until their removal in October 2005. Custody was transferred to the Iowa Department of Human Services for placement in family foster care. The three youngest children eventually were returned to their parents' care. The child in interest was placed with the current foster family in September 2006.

In 2007 the court entered a permanency order continuing the child's custody with the department for another planned permanent living arrangement under Iowa Code section 232.104(2)(d)(4) (2007). The department placed the child permanently with the foster family. The child's permanent placement was continued following permanency review hearings in 2008, 2009, and 2010.

In late November 2011 the child sent a text to her care coordinator indicating she wanted to talk about her foster parent becoming her guardian. The child was not interested in adoption because she wanted to maintain some relationship with her biological family. Visitation with the mother was difficult to schedule and occurred only once every couple of months, in part because of the child's busy schedule with work and school and church activities.

The options of foster care, guardianship, and adoption were discussed. The department provided information on financial benefits available to a child who “ages out” of foster care that are unavailable if the child is in a guardianship or is adopted. The child and foster parent both desired guardianship. The department changed its placement recommendation from family foster care to guardianship with the foster parent. The December 2011 permanency review order continued the child’s placement pending notice and a contested hearing on the department’s request to modify permanency and establish a guardianship.

At the March 2012 hearing on modifying permanency, the caseworker testified concerning the financial consequences of modifying the permanency order. She spoke of the desires of the child and the foster parent to make the relationship more permanent through a guardianship. She also testified the department had no further services to offer the child and the child was not in need of the juvenile court’s assistance, so if a guardianship were established, it could be transferred to the probate division of the district court and the juvenile case closed. After examination of the caseworker by all the attorneys, the court also asked a number of questions concerning benefits and services available to the child while in foster care and after aging out of foster care, what services the child currently was receiving, and what effect establishing a guardianship would have on benefits and services for the child—focusing particularly on the time she would be attending college. The foster father testified to his ability and willingness to provide financially for the child through college and his desire to be the child’s guardian.

The court found the State had shown good cause to modify the permanency order and establish a guardianship for the child with the foster parent. The court concluded the order changing the permanency goal from another permanent planned living arrangement to guardianship was in the child's best interests and there were no necessary services being provided that could not be provided through a probate guardianship. The court modified the permanency order and transferred guardianship and custody of the child from the department to the foster parent. See Iowa Code § 232.104(2)(d)(1) (2011). The court also transferred jurisdiction of the matter to probate and provided for subsequent closing of the juvenile case. See *id.* § 232.104(7)(b). The mother appeals.

II. Scope and Standards of Review.

Our review of permanency orders is *de novo*. *In re A.T.*, 799 N.W.2d 148, 150 (Iowa Ct. App. 2011). A party seeking to modify a prior order must show circumstances have so materially and substantially changed that modification is in the best interests of the child. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). “[O]ur responsibility in a modification of a permanency order is to look solely at the best interests of the child[] for whom the permanency order was previously entered.” *In re A.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993).

III. Merits.

A. Modification. The mother contends the court erred in modifying the permanency order. She “believes a continuation of another planned permanent living arrangement (foster care) is in the child's best interests due to the substantial educational benefits that will be available when [the child] ages out of

foster care.” The State responds that financial considerations may factor into a determination of the child’s best interests, “but other considerations may (and very often do) outweigh them.” See *In re H.S.*, 805 N.W.2d 737, 746-49 (Iowa 2011) (discussing whether termination of a parent’s child support is an adequate reason to avoid termination otherwise in a child’s best interests and holding “the anticipated loss of child support funds in and of themselves as a result of termination should not be part of the section 232.116(2) best interests analysis”).

This child’s placement has been before us on appeal twice before. See *In re S.A.*, No. 08-0969, 2008 WL 4308211, (Iowa Ct. App. Sept. 17, 2008), *In re T.A. and S.A.*, No. 07-0905, 2007 WL 2257569, (Iowa Ct. App. Aug. 8, 2007). In both cases, we affirmed the child’s placement with the foster family as in her best interests, and we agreed the child could not be returned to her mother’s care. In this appeal, the mother does not seek the child’s return, but to continue the child’s placement in foster care.

The court personally questioned the caseworker on the benefits and disadvantages of the requested modification. It appears the foster father would have preferred to adopt the child, but considered her desire to maintain contact with her biological family and agreed to pursue guardianship. The court’s order shows it carefully considered the potential financial benefits the child could receive if she remained in foster care until age eighteen. The court also considered the foster father’s ability to provide for the child when she pursues her desire to go to college out of state.

We agree with the court’s determination the department demonstrated good cause to modify the permanency order. Even though the child wants to

maintain contact with her biological family and to know they are doing well, visitation (or scheduling visitation) has been stressful to her. Her placement in another planned permanent living arrangement and her lack of any relationship with her biological father restricted her ability to obtain a passport to participate in an overseas trip with her foster father. Changing to a guardianship will provide her with more security and stability and reduce stress on her. We agree with the court the guardianship is in her best interests, even though she will lose access to potential financial benefits. We affirm the modification of permanency from another planned permanent living arrangement to guardianship.

B. Transfer to Probate. The mother also contends the court erred in transferring jurisdiction of the guardianship from the juvenile division of district court to the probate division. She argues there is still a need for supervision, care, and treatment offered through the juvenile court's involvement.

The caseworker testified the child had no need for continuing services, but mental or behavioral services could be provided in the guardianship through Title XIX if they were needed. The department did not recommend any continuing services. The guardian ad litem also supported the transfer. We conclude the order transferring jurisdiction of the guardianship to probate and providing for the subsequent closure of the juvenile case was appropriate.

We affirm the order modifying permanency.

AFFIRMED.