

IN THE COURT OF APPEALS OF IOWA

No. 3-088 / 12-2254
Filed February 13, 2013

**IN THE INTEREST OF K.Q., J.A. AND M.A.,
Minor Children,**

**D.A., Father,
Appellant.**

Appeal from the Iowa District Court for Story County, Stephen A. Owen,
District Associate Judge.

A father appeals the juvenile court's dispositional order placing his
children with an appropriate relative. **AFFIRMED.**

Mark J. Olberding of Olberding Law Office, Nevada, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Stephen Holmes, County Attorney, and Joshua Vander Ploeg, Assistant
County Attorney, for appellee State.

Matthew Mauk of Ostebee Law Office, P.L.C., Ames, for appellee mother.

Gerald Moothart, Ames, for appellee father.

Nicolas Fontanini of Fontanini Law Office, Ames, attorney and guardian ad
litem for minor children.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A father appeals the juvenile court's dispositional order placing his children with an appropriate relative. He asserts the court should have ordered the children be placed in his care with the condition the children's mother be ordered to vacate the home. We affirm.

The father and mother are married and are the parents of J.A., born in 2006, and M.A., born in 2003. The mother also has another child, K.Q., born in 1998. Although the dispositional order at issue was in regard to K.Q., J.A., and M.A., this appeal only concerns J.A. and M.A.¹

This family came to the attention of the Iowa Department of Human Services (Department) in June 2012. At that time, the three children were living with the father and mother, who both had criminal records for drug-related offenses. The mother was using methamphetamine and marijuana and selling drugs out of the home. She admitted to a long history of drug and alcohol use. The father was working two jobs. The children were not being properly supervised. The parents stipulated to the children's adjudication as children in need of assistance (CINA). Custody of the children remained with the parents under the protective supervision of the Department.

The dispositional hearing was continued until December 2012. The Department's report to the court recommended the children remain with the parents under the Department's supervision, but noted the mother had missed several drug screens as well as the entire month of treatment classes in

¹ K.Q.'s father did not appeal. The mother appealed, but her appeal has been dismissed voluntarily. The State did not file a brief in this appeal.

November 2012. The Department's report detailed that the mother told the children not to tell the father when she was drinking; when the children told the father, he told them "not to share with anyone else." The Department also recommended a modification hearing be scheduled to discuss K.Q.'s safety and placement options; K.Q. was born without arms and requires special assistance, which J.A. and M.A. provided because the mother refused. In addition to neglect, K.Q. was subjected to verbal abuse in the home, in the presence of J.A. and M.A., and had expressed she did not want to remain in the home. The Department noted that in light of these "many concerns," it was "important to consistently monitor what is occurring in this family."

At the hearing, the children's maternal grandmother testified she was ready, willing, and able to care for the children. The children had lived with the grandmother from late December 2011 to early April 2012 at the father's request when he was "not able to handle" the children and the mother's methamphetamine usage "at the same time." K.Q. had also lived with the grandmother for the first nine years of her life. The grandmother testified she lived in the same school district as the children currently attended.

The father did not testify at the hearing.

In its December 2012 dispositional order, the juvenile court observed the father and mother "have a long history of involvement with drugs and alcohol" and although they "had begun making strides toward living a sober lifestyle," it remained an "ongoing process." In addition to exposure to drugs and alcohol, the court expressed concern about verbal and emotional abuse in the home and questioned whether the children's basic needs were being met. The court stated,

“While the bulk of the neglect and abuse is directed at K.Q., it is equally damaging to J.A. and M.A. to be in a home where they can be witness to such abuse.” The court determined “it would be contrary to the children’s welfare to remain in the children’s home because the children would be without proper care and supervision and the children’s treatment needs require the children’s out-of-home placement and placement services.”

The court ordered custody of the children with the Department for placement with an appropriate relative, with “strong consideration to the children’s placement with their maternal grandmother.”² The father now appeals the court’s order in regard to J.A. and M.A, arguing their placement outside his home is not the least restrictive alternative available to the court. He asserts the court should have ordered the children be placed in his care with the condition the mother be ordered to vacate the home.

We review this matter de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The juvenile court is given exclusive jurisdiction over CINA proceedings. Iowa Code § 232.61 (2011); *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995). The ultimate goal of CINA proceedings is for the child to receive “the care, guidance and control that will best serve the child’s welfare.” Iowa Code § 232.1; *K.R.*, 537 N.W.2d at 777. The court must make the least restrictive disposition that is appropriate considering all the circumstances of the case. Iowa Code § 232.99(4). Custody of a child should not be transferred from the child’s home unless the court finds there is clear and convincing evidence “the child cannot be protected from some harm which would justify the adjudication of the child as a

² The record shows no safety concerns present in the grandmother’s home.

child in need of assistance and an adequate placement is available.” *Id.* § 232.102(5)(a)(2). “[T]he court must make a determination that continuation of the child in the child’s home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made.” *Id.* § 232.102(5)(b). The court’s determination “must be made on a case-by-case basis.” *Id.*

Upon our de novo review of the record, we agree with the court’s decision. The record contains clear and convincing evidence the children would be exposed to harm if they were to remain in the home of their parents. Although it is clear the bulk of the safety concerns stem from the mother, the father’s attempts to conceal and minimize the mother’s actions are troubling. The father has continued to give the mother “another chance,” even when it meant he had to take the children out of their home to live with the maternal grandmother because he was unable to care for them and deal with the mother’s methamphetamine usage at the same time. The father works two jobs and is not available to supervise. Under these facts, if the court ordered the children were to remain in the custody of the father, provided they have no contact with the mother, we are not convinced the father would follow through to eliminate contact with the mother.

We further observe the transfer of K.Q. from the family home is not at issue in this appeal. We acknowledge there is a preference to keep siblings together. *In re A.M.S.*, 419 N.W.2d, 723, 734 (Iowa 1988). Although this preference is not absolute, under these facts, we find it is in the best interests of J.A. and M.A. to remain in a placement with K.Q.

Our ultimate concern is with the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006). Here, we are convinced it is in J.A. and M.A.'s best interests to be in a placement free from drug and alcohol use and emotional abuse and neglect. We affirm the dispositional order entered by the court.

AFFIRMED.