

IN THE COURT OF APPEALS OF IOWA

No. 3-122 / 13-0023
Filed February 13, 2013

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

**S.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A mother appeals the district court's permanency order. **AFFIRMED.**

Timothy Tupper of Tupper Law Firm, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County
Attorney, for appellee State.

Lauren Phelps, Davenport, for appellee father.

Tomas Rodriguez, Davenport, attorney and guardian ad litem for minor
child.

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

VOGEL, P.J.

Sherry appeals the district court's permanency order determining her daughter, A.J.'s, best interests were served by being placed in the guardianship of her maternal grandmother, M.P., and remaining in her custody.¹ Sherry argues granting her six more months, rather than establishing a guardianship, would better serve A.J.'s interests.

We review permanency orders de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Best interests of the child control the decision in granting a permanency order in a child custody matter. *Id.* The State on a permanency hearing needs only show the child cannot be returned by convincing evidence, not by clear and convincing evidence. See Iowa Code § 232.104(3)(c) (2011). Iowa Code section 232.104(3)(c) provides that prior to entering a permanency order, the court must find convincing evidence that:

- a. A termination of the parent-child relationship would not be in the best interest of the child.
- b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.
- c. The child cannot be returned to the child's home.

The Department of Human Services (DHS) became involved with this family in September, 2011, due to Sherry's substance abuse and inability to care for A.J. (born 2004). A.J. was officially removed from Sherry's care on March 29, 2012, due to Sherry's continued struggles with addiction and the plethora of problems accompanying addiction, but A.J. has effectively lived with her

¹ A.J.'s father was also present and part of the permanency proceeding. He does not appeal.

grandmother since October 26, 2011. A.J. was adjudicated as a child in need of assistance (CINA) on March 29, 2012.

In the weeks leading up to permanency hearing, Sherry was making progress towards addressing her mental health and substance abuse issues. However, immediately before the first hearing day, held on October 18, 2012, there was an incident of a rule violation regarding the presence of Sherry's paramour, then lying to DHS about the incident coupled with evidence Sherry "lost focus" on her recovery. This caused DHS to change its recommendation from allowing Sherry an additional six months to having A.J. under the guardianship of her grandmother. Moreover, between the first hearing date and the second, November 21, Sherry relapsed on drugs (crack) and alcohol. She has not been able to separate herself from the drug culture that has plagued her for years. In pursuit of a better life, Sherry has enrolled in an eighteen-month faith-based shelter program where she is not allowed to have a job or have any children residing with her for the first six months. Although she had only resided there for three days prior to the November 21 hearing, she felt positive about the program and testified she was committed to success and changing her life around.

A.J. is bonded to her mother and they have positive interactions, but her therapist testified A.J. has anger, frustration, grief, and disappointment because of her mother's addictions. A.J. is also bonded to her grandmother and feels safe and happy there. According to Sherry's testimony, she has not been a full-time mom because she and A.J. have lived with M.P. most of A.J.'s life, and M.P. is a "second mom" to A.J. Sherry testified M.P.'s home is the only stability A.J.

has ever known. The court found termination at this point is not in A.J.'s best interest, but she cannot be returned at this time to Sherry's care. We join Sherry and A.J.'s therapist in hoping Sherry will be successful in her new program and agree with her that guardianship with M.P. is best, as A.J. "has been waiting a long time for her mother to get it together." The State has proved by convincing evidence establishment of a guardianship with M.P. is the best and least restrictive course of action.

AFFIRMED.