

**IN THE COURT OF APPEALS OF IOWA**

No. 3-240 / 13-0028  
Filed March 27, 2013

**IN THE INTEREST OF A.A. and B.A.,  
Minor Children,**

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

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Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals from a permanency order placing guardianship of two children with the maternal grandmother and limiting the father's visitation to the discretion of the grandmother. **AFFIRMED.**

Michael H. Said of Law Office of Michael H. Said, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Justin Rogers, Des Moines, for mother.

Michelle Saveraid of Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A father appeals from the juvenile court's permanency order in a child in need of assistance case. While the father agrees with juvenile court's guardianship decision, the father argues the juvenile court erred in ordering visitation with the children to take place at the discretion of the guardian. We affirm.

**I. Background Facts & Proceedings**

The father and mother have two children together—A.A. (born August 1999) and B.A. (born July 2008). The father and mother have an unstable relationship and a significant history of substance abuse. In particular, the father has a longstanding history of abusing crack cocaine. Shortly after A.A.'s birth, the father served over eight years in prison for a robbery he committed after a five-day cocaine binge. The father's substantial criminal history did not end upon his release from prison. After his release, the father was convicted of theft on three separate occasions from 2010 through 2011.

This case first came to the State's attention in July 2011 when the Department of Human Services (DHS) investigated reports that the father and mother were abusing crack cocaine in front of the children. The mother admitted to using crack cocaine and marijuana and provided a positive drug screen. The father delayed providing a drug screen and tested negative for the presence of any drugs. The parents consented to removal. A.A. was placed with the maternal grandmother and B.A. was placed with the paternal aunt.

In August 2011, the juvenile court held an uncontested removal hearing and confirmed removal. The same month, the juvenile court held an uncontested adjudication hearing and adjudicated both children as children in need of assistance. In October 2011, the juvenile court held a dispositional hearing, confirmed the children as children in need of assistance, and ordered the parents to engage in services to work toward reunification and sobriety.

In January 2012, the paternal aunt informed the court she was no longer able to care for B.A. B.A. was then placed with the maternal grandmother where the child remained for the rest of the proceedings.

In April 2012, the juvenile court held a review hearing. The juvenile court found the parents were not cooperating with drug screens or treatment. From November 2011 through April 2012, the parents did not submit to drug testing with DHS. During that time there were significant problems with supervised visitation, including the parents frequently arriving late and leaving early. During that same time frame, the father did submit to drug testing through Living Recovery. Living Recovery offers recovery support services and substance abuse treatment. An analysis of the father's urine tested positive for cocaine on February 14, March 20, March 27, and April 3, 2012. In April 2012, the father's hair stat test results were positive for the presence of cocaine.

In May 2012, service providers reported that they believed the father may have been injecting cocaine in the parking lot prior to a visit. The father arrived at the visit with bandage wrapped around his inner arm. He then requested a first-aid kit to stop the bleeding from a needle mark and provided inconsistent

stories about the injury. The service providers reported a difference in the father's behavior throughout this visit. On May 2, May 14, and May 31, 2012, the father's sweat patch indicated high levels of cocaine metabolites consistent with recent use. During the same time, the father provided urine samples to Living Recovery that tested negative for cocaine. DHS reported that drug testing at Living Recovery is generally scheduled in advance, allows for a person to provide an unsupervised urine sample, does not test for urine temperature, and does not send the urine specimen to the lab for further testing. Although the father reported relapsing throughout this case, including significant drug use during a trip to Las Vegas, he denied any drug use after March 2012.<sup>1</sup>

In June 2012, the State petitioned to terminate parental rights. In July 2012, the father's sweat patch again tested positive for cocaine.

In August 2012, the juvenile court held a joint permanency hearing and termination of parental rights proceeding. At that time the father was living at the local YMCA. Although he had been unemployed throughout much of this case, the father had recently secured employment washing dishes at a restaurant. He had not secured future housing and admitted he needed a higher level of drug treatment than he was receiving. The father requested custody of both children and believed it was in the children's best interest to return to his care. At the conclusion of the first day of testimony, the court continued the matter until October 2012. Then, due to a scheduling conflict, the court ordered another continuance until November 2012. Following the conclusion of the joint

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<sup>1</sup> The juvenile court questioned the reliability of the positive sweat patch results, and did not rely on the results in making its subsequent decision.

permanency hearing and termination of parental rights proceeding, the juvenile court found clear and convincing evidence of statutory grounds for termination under Iowa Code section 232.116(1)(f) and (h) (2011). But the juvenile court did not terminate parental rights. Rather, the juvenile court granted guardianship to the children's maternal grandmother, changed the permanency goal to reunifying B.A. with the mother, extended the termination proceedings to allow the mother to work toward reunification, and allowed the father to have visitation at the grandmother's discretion. The mother did not appeal the juvenile court's decision. The father appeals the court's limitation of visitation.

## **II. Standard of Review**

On appeal, we review permanency orders *de novo*. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review both the facts and the law and adjudicate rights anew. *Id.* We give non-binding deference to the juvenile court's factual findings. *Id.*

## **III. Analysis**

The father argues the juvenile court erred in limiting his visitation under the permanency plan to the guardian's discretion because limiting visitation was not in the children's best interest. Under Iowa Code section 232.104(2), the juvenile court has several options when entering a permanency order. Pursuant to section 232.104(d)(1), the juvenile court placed guardianship of both children with the maternal grandmother.

In its thorough decision, the juvenile court found A.A.'s growth and long-term needs could best be met through guardianship with the grandmother. The

court explained that the father had made some positive changes in his life including securing employment, gaining a measure of sobriety, and completing required parenting classes.

With respect to the younger child, B.A., the court found

The Father's inability and unwillingness to fully cooperate with services—combined with his cocaine abuse throughout much of the case and clear need for continuing substance abuse treatment at a high level and his admitted inability to be a custodial option for now (or any time in the immediate future) despite the CINA cases being open for more than a year—makes very clear . . . that he cannot provide permanency for [B.A.] He will not be able to meet [B.A.]'s daily extensive needs within any reasonable time.

Rather than terminating the father's parental rights, the court modified the permanency plan to work toward reunifying B.A. with the mother. At the time, the mother had secured independent housing while the father was still living in transitional housing through the drug treatment program. The court found reunifying B.A. with the father was not appropriate and ordered the father's visitation with both children continue at the grandmother's discretion.

In light of the father's significant and continuing substance abuse issues, need for a higher level of substance abuse treatment, ongoing criminal conduct, unstable housing, unstable relationship with the mother, and failure to arrive consistently at supervised visits on time—including one visit where the father was reportedly injecting cocaine into his arm in the parking lot—clear and convincing evidence supports the juvenile court's measured decision to place guardianship with the maternal grandmother and allow visitation with the father at the guardian's discretion.

**AFFIRMED.**