

IN THE COURT OF APPEALS OF IOWA

No. 3-322 / 13-0307

Filed April 24, 2013

**IN THE INTEREST OF N.C. AND D.C.,
Minor Children,**

**C.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals from a dispositional order continuing the removal of her
children. **AFFIRMED.**

Jeannine Roberts, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Amy Dollash of the Linn County Public Defender Office, Cedar Rapids, for
father.

Kimberly Opatz of Linn County Advocates, Cedar Rapids, attorney and
guardian ad litem for minor children.

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

POTTERFIELD, J.

A mother appeals from a dispositional order continuing the removal of her children from her care.

I. Background Facts and Proceedings.

David and Casey are the parents of three children: a daughter, Na.C., born in 2010; a son, D.C., born in 2011; and a son, Ni.C., born in October 2012. David and Casey and their children have been involved with family services in Ohio and New York dating back to May 2011.¹

David and Casey brought their two oldest children to Iowa with the intent that an Iowa couple (Jackie and Mike H.) would adopt their soon-to-be-born infant. Jackie and Mike had once been the foster parents of Casey's sister in Ohio. Casey contacted them when she and David were homeless in Ohio. Casey and David had moved to Ohio from New York in July 2012 and were struggling to pay for their hotel and to meet the physical needs of their children. David is bipolar and Casey has an antisocial personality disorder.

Na.C. has been diagnosed with Rhetts syndrome and at nearly three years of age is not walking and has difficulty controlling her hands and feet. D.C. is also seriously developmentally delayed. In July 2012, neither child was eating solid foods as expected. Jackie and Mike went to Ohio and brought David and Casey and the children back to their home in Iowa. Jackie helped the family access needed resources and services. The children were taken to a doctor:

¹ New York family protective services supervised the family from May 2011 through June 2012 with one concern being the parents' failure to provide the two infants with adequate food. When the family moved to Ohio with the intention of living with Casey's sister in July 2012, the family came to the attention of protective services there.

Na.C. had lice, a rash, and a yeast infection; D.C. had a rash all over his body, eczema, and a yeast infection.

A child-in-need-of-assistance (CINA) petition was filed on September 21, 2012. In an affidavit attached to the petition, social worker Greg Wilson averred the parents struggled to provide day-to-day care for the children, had no income beyond Na.C.'s disability income (SSI), and had accessed services with Jackie's help. Wilson expressed concern for the well-being of the children if the parents decide to take them out of Jackie and Mike's home. Wilson noted he had contacted New York protective services and had been informed the "primary concerns in that case w[ere] [David's] temper and mental health and [Casey's] mental health."

On November 20, 2012, upon a stipulation of all parties, Na.C. and D.C. were adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2011) (child likely to suffer harm due to parent's inadequate supervision), 232.2(6)(g) (parent fails to exercise a minimal degree of care in supplying the child with adequate food, clothing, or shelter), and 232.2(6)(n) (parent's mental capacity or condition results in the children not receiving adequate care).² The juvenile court noted in the adjudication order that it would consider a suspended judgment at the time of disposition. The court ordered the custody of the children remain with the parents under the protective supervision of the department of human services (DHS) pending dispositional hearing. Family services were to continue, which included family safety, risk, and permanency services (FSRP), family team

² In October 2012, Casey gave birth to Ni.C. whom Jackie and Mike intended to adopt. Ni.C. is involved in a separate CINA proceeding and his custody is not at issue here.

meetings, supervision and services through DHS, WIC, Early Access, and others. David and Casey were each to obtain a psychological or psychiatric evaluation. A dispositional hearing date was set.

On November 27, 2012, social worker Wilson sought a temporary removal order asserting concerns that the children were not being fed appropriately; David and Casey and the children had been living with Jackie and Mike, but Jackie and Mike were “moving to a new residence on December 1st, 2012” and “David and Casey are not welcome in the new home”; David and Casey had no place else to live; and David had reportedly made comments about leaving the state. The court found the parents “will be homeless as of 11/30/12” and “[t]he children at imminent risk of harm if denied adequate food and shelter.” The court ordered temporary removal of the children from their parents’ care and ordered their temporary custody with DHS for placement with a relative or another suitable adult. The children remained with Jackie and Mike.

A removal hearing was held on December 4, and the removal was continued upon the court being “informed that the parties are in agreement” with continued removal due to the parents’ current homelessness.³

On January 9, 2013, the children’s guardian ad litem (GAL) Kimberly Opatz filed a statement with the juvenile court noting the numerous services being provided to Na.C. (daily sessions with Early Access, twice weekly occupational therapy sessions, and scheduled additional testing concerning her disabilities), D.C.’s severe developmental delays, and need for services. Opatz expressed her concern about the parents’ ability to supervise and care for their

³ The parents contested all other asserted grounds for removal.

children properly, noting their history of housing instability; lack of telephones; the children's special needs and the parents having not attended any of Na.C.'s therapies; and the parents' mental health needs and professional recommendations for treatment. She concluded,

At this time I cannot recommend that [Na.C.] and [D.C.] return home at this time due to the concerns listed above. Dave and Casey need to demonstrate they are capable of parenting [Na.C.] and [D.C.] appropriately and providing the additional supervision that is necessary. They need to maintain their housing, be consistent with visitation, and attend to their mental health needs.

A dispositional hearing was held, following which the juvenile court entered a ruling on February 4. The court determined the children could not presently safely return to the parents' care:

Visits should take place in the new apartment to determine how well the parents are able to supervise their children. David needs to initiate mental health counseling as well as participate in these visits. Parents need to demonstrate they are able to meet the children's needs including appropriate supervision and getting them to their necessary appointments.^[4]

Casey appeals the dispositional order, contending the court erred in finding the children could not remain in the parents' home, in not returning the children to the parents' care as the least restrictive disposition, and in finding reasonable efforts had been made to alleviate the out-of-home placement.

II. Scope and Standard of Review.

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review the facts and law and adjudicate rights anew, giving weight to the fact findings of the court—especially regarding the credibility of

⁴ New York protective services notes, too, indicate the parents had difficulties getting the children to necessary appointments.

witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). However, we are not bound by these findings. *Id.* The crux of our inquiry is always the best interests of the child. *K.N.*, 625 N.W.2d at 733.

III. Discussion.

It is the juvenile court's role at the dispositional hearing to "inquire of the parties as to the sufficiency of the services being provided and whether additional services are needed to facilitate the safe return of the child to the child's home." Iowa Code § 232.99(3). The court is to make the "the least restrictive disposition appropriate considering all the circumstances." *Id.* § 232.99(4); see *In re S.R.A.*, 440 N.W.2d 619, 620 (Iowa Ct. App. 1989).

Upon our de novo review, we conclude the least restrictive disposition is an out-of-home placement as determined by the juvenile court. The parents' history of homelessness, housing instability, and unresolved mental health issues raise serious concerns about their ability to provide for the safety of the children, especially in light of the children's very special needs and service requirements. Numerous services are in place; others are being initiated. We reject the mother's claim that reasonable efforts have not been made. The parents will have the opportunity to address their own mental health needs, as well as develop and demonstrate their abilities to care for the children. But we are not convinced the parents are currently capable of caring for these children safely. We affirm the dispositional order.

AFFIRMED.