

IN THE COURT OF APPEALS OF IOWA

No. 6-1045 / 06-1897
Filed January 18, 2007

**IN THE INTEREST OF M.T.,
Minor Child,**

**E.R.T., Father,
Appellant.**

Appeal from the Iowa District Court for Fayette County, Allan D. Allbee,
Associate Juvenile Judge.

A father appeals from a CINA dispositional order. **AFFIRMED.**

Patrick B. Dillon, Sumner, for appellant father.

Mary Jane White, Waukon, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, W. Wayne Saur, County Attorney, and Nathan Lein, Assistant County
Attorney, for State.

Andrew Thalacker, Waterloo, for minor child.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.**I. Background Facts and Proceedings**

Eric is the father of M.T., born in 1999. Samantha, M.T.'s mother, and Eric never married. Eric was named as the father on M.T.'s birth certificate; he lived with M.T. and Samantha for a short time after the child's birth. Neither parent ever sought or obtained a district court order for custody or visitation with the child. In a dispositional order entered in December 2001, at the close of a prior child in need of assistance (CINA) proceeding, the juvenile court placed custody of M.T. with Samantha; visitation with Eric was encouraged and allowed by the court. By district court order entered in February 2002, Eric was legally established as the father of M.T. and ordered to pay child support. M.T. was in Samantha's custody the majority of the time between the fall of 2001 and 2006.

Samantha left M.T. in Eric's care for summer visitation beginning in early June 2006. M.T. was removed from Eric's care in late June 2006 after illegal drugs were found in the home. Eric and his paramour were arrested; Eric admitted to having used methamphetamine and marijuana while caring for M.T.¹ The juvenile court, by order entered September 8, 2006, adjudicated M.T. CINA, as defined in Iowa Code section 232.2(6)(n) (2005). The CINA adjudication was based on a founded child protective assessment against Eric and his paramour for denial of critical care for lack of proper supervision due to their use of illegal drugs while caring for M.T. Samantha took no position on the adjudication; the

¹ Eric has an extensive criminal history, including arrests for alcohol and drug offenses, willful injury, and assault causing bodily injury. Eric pled guilty to assault causing bodily injury in September 2004 after he stabbed Samantha's husband, Robert, in the back with a pocket knife. The incident took place in the presence of M.T.

adjudicatory harms identified did not run against her. However, she was incarcerated at the time of the adjudicatory hearing and unavailable to parent the child.² M.T. was placed with a relative.

Following the removal, Eric and his paramour participated in substance abuse evaluation and treatment and drug testing. He attended parenting skill sessions and visitations with M.T. At the time of the dispositional hearing on November 13, 2006, Eric remained drug free and his visits with M.T. had progressed to unsupervised. The Iowa Department of Human Services (DHS) proposed a thirty-day home trial of M.T. with Eric.

The DHS case permanency plan identified no problems with Samantha and contained no requirements for her to regain M.T.'s custody. An unannounced DHS visit to the home of Samantha and her husband, Robert, revealed no safety concerns. The home was clean and adequate; the children living in the home³ were adequately dressed and appropriately supervised by Samantha and Robert. In a home study completed on November 2, 2006, however, the DHS worker expressed concerns about Samantha's and Robert's lack of honesty with the DHS. The worker did not recommend M.T.'s immediate return to Samantha's care.

Following the November 13, 2006 dispositional hearing, the juvenile court entered a written dispositional order placing custody of M.T. with Samantha

² Samantha's criminal history includes arrests for possession of controlled substances and an arrest for fifth-degree theft. At the time of the removal hearing, she was serving a jail sentence imposed after she was held in contempt for failure to complete a prior sentence imposed after she was held in contempt for failure to timely pay fines and restitution.

³ Samantha has an eleven-year-old son from a prior relationship; Samantha and Robert have two children.

under the protective supervision of DHS and subject to regular visitation between M.T. and Eric. The court concluded the State had not shown by clear and convincing evidence that M.T. would suffer physical abuse or some other adjudicatory harm as defined by section 232.2(6) if placed in Samantha's custody. See Iowa Code § 232.102(5)(a). Eric appeals.

II. Standard of Review

Our review of juvenile court proceedings is de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999). While we are not bound by the findings of the juvenile court, "we give weight to [its] findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses firsthand." *In re S.V.*, 395 N.W.2d 666, 669 (Iowa Ct. App. 1986); Iowa R. App. P. 6.14(6)(g). Precedent is of little value; "each case must ultimately turn on its own particular facts." *Id.* Our paramount concern is the best interests of the child. *In re N.C.*, 551 N.W.2d 872, 872 (Iowa 1996).

III. Discussion

Following a dispositional hearing, the juvenile court must make "the least restrictive disposition appropriate considering all the circumstances of the case." Iowa Code § 232.99(4). The alternative dispositions are listed in sections 232.100 to 232.102 "in order from least to most restrictive." *Id.* They include suspended judgment; retention of custody by "the child's parent, guardian, or custodian at the time of the filing of the petition"; or transfer of custody to "a parent who does not have physical care of the child, other relative, or other suitable person." See *id.* §§ 232.100-.102. "Whenever possible, the court should

permit the child to remain at home with the child's parent, guardian, or custodian." *Id.* § 232.102(5)(a).

The district court made the following findings:

Both parents stand on an equal footing as respects their legal status as custodians of the child and both should be considered as placement options for the child as potentially retaining custody at disposition. The custodial arrangement that is in the child's best interests is that he be placed in the custody of his mother because the State has not shown by clear and convincing evidence that [M.T.] would suffer an adjudicatory harm if placed in her care. The child was endangered by the acts of his father and his paramour in using illegal drugs while care for the child and that is why the child was adjudicated [CINA]. While the child's father has made steps toward rehabilitation, the Department is not in a position to recommend that custody be returned to him, rather only a trial placement be considered. Court supervision of the placement of the child with either parent will require on-going supervision due to the substantial history of instability, drug use, and criminality.

These findings are fully supported by the record. Upon de novo review, we conclude the juvenile court properly placed custody of M.T. with Samantha, given the unique circumstances of this case. No custody or visitation order with respect to M.T. has ever been entered. M.T. had been in the physical care of Samantha for most of his life, including the five years prior to M.T.'s removal from Eric's care. M.T. was with Eric for a month-long summer visitation at the time of his removal. While neither parent has presented the image of an ideal parent, the adjudicatory harms identified in the CINA adjudication did not run against Samantha. In the absence of clear and convincing evidence that M.T. would suffer any adjudicatory harm in the care of his mother, see *id.* § 232.102(5)(a), we conclude placement with Samantha, the parent with whom M.T. has lived for

the majority of his life, is in M.T.'s best interests. Accordingly, we affirm the juvenile court's dispositional order.

AFFIRMED.