

IN THE COURT OF APPEALS OF IOWA

No. 6-269 / 06-0377
Filed June 14, 2006

IN THE INTEREST OF D.A.M., Minor Child,

S.M., Father,
Appellant,

J.M., Legal Guardian,
Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Juvenile Judge.

The father and legal guardian of a child appeal a permanency order in a
child in need of assistance case. **AFFIRMED.**

Neill Kroeger, Davenport, for appellant father.

Matthew Leddin of Gallagher, Millage & Gallagher, P.L.C., Davenport, for
appellant legal guardian.

Marsha Arnold, Davenport, attorney for minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, William E. Davis, County Attorney, and Gerda Lane, Assistant County
Attorney, for appellee State.

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, guardian
ad litem for minor child.

Considered en banc.

PER CURIAM***I. Background Facts & Proceedings***

Scott and Sandra are the parents of Devon, who was born 1991. Devon was removed from the parents' care in April 1997 due to physical abuse and neglect in the home. She was placed with the paternal grandmother, Janice. Devon began attending play therapy to help her deal with a history of extreme childhood maltreatment.¹ She was diagnosed with post-traumatic stress disorder.

Devon was adjudicated to be a child in need of assistance (CINA) under sections 232.2(6)(a) (1997) (abandonment), (b) (parent is imminently likely to neglect child), (c)(2) (child is likely to suffer harm due to parent's failure to supervise), (g) (parent fails to provide adequate food, clothing, or shelter), and (n) (parent's mental condition results in child not receiving adequate care).

Scott was sent to prison for probation violations on an original charge relating to forged checks.² Sandra has been largely uninvolved in her child's life. On July 6, 1998, the juvenile court placed Devon in the guardianship of Janice. The case then proceeded with annual review of the guardianship. Scott was released from prison in 1998. In 2000 he moved into the home with Janice and Devon. Scott, Janice, and Devon participated in family-centered services.

In February 2005, Devon had suicidal thoughts, and she was hospitalized. She was not returned to her grandmother's home, but in March 2005 was placed in foster care. Devon has engaged in cutting behavior. Devon was diagnosed

¹ Devon was sexually abused by a non-related individual.

² Whole on parole for the forgery charge, Scott was convicted of a sexual offense involving a fifteen-year-old girl. As a result, he is a registered sex offender.

with major depressive disorder. Devon needs consistency in her living environment. Scott and Janice struggled with providing limitations on Devon's behavior by imposing discipline. In foster care, Devon did well when her boundaries were clear and consistent.

Scott has a tendency to blame others for his situation. He was provided with therapy and skill development services to help him make changes. On February 3, 2006, Devon was permitted to have an unsupervised, overnight visit with her father. Scott was to supervise Devon at all times. Instead, he took Devon to the mall and left her there without adult supervision. Devon contacted a male friend and the friend's mother discovered they were at the mall with no adult supervision. When the foster parents confronted Devon about this incident, she cut her arms and stomach with a razor blade. The Department of Human Services changed its recommendation from reunification to another permanent planned living arrangement, such as long-term foster care.

A permanency hearing was scheduled for February 13, 2006. Based on the change in recommendation, Scott and Janice requested a continuance. Their request was denied by the juvenile court. The court determined Devon should be placed in long-term foster care. Devon was then fourteen years old, and the court determined termination of parental rights would not be in her best interests. On the other hand, it was clear Scott and Janice were unable to

provide Devon with the care she needed. Scott and Janice have appealed the permanency order.³

II. Standard of Review

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Continuance

Scott and Janice contend the juvenile court should have granted their motion to continue the permanency hearing. They contend they did not find out until immediately before the permanency hearing that the recommendation had been changed from reunification to another permanent planned living arrangement. The juvenile court denied the motion for a continuance based on "the length of time this case has been pending, the fact that the child was removed from her guardian's care on February 18, 2005, and the need to establish permanency"

A motion for a continuance is reviewed under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). We will reverse only if injustice will result to the party desiring the continuance. *Id.* Denial of the motion to continue must be unreasonable under the circumstances before we will reverse. *Id.*

³ The attorney for Devon has filed a statement in support of the position of Scott and Janice. The guardian ad litem, however, filed a brief stating Devon should not be returned to the care of Scott and Janice.

We find no abuse of discretion in the juvenile court's denial of the motion for a continuance. Janice's attorney admits that a Department worker called him on February 6, 2006, and told him the overnight visit did not go well and "it may affect her recommendation regarding permanency." Furthermore, appellants do not specifically state what evidence they would have presented or what they would have done differently if the continuance had been granted.

IV. Placement of Child

Scott and Janice assert Devon should be returned to their care. Scott states that he has improved his parenting skills. They point out that Devon testified she no longer had a desire to cut herself. Devon testified she wanted to return to the care of her father and grandmother.

The evidence clearly shows Scott and Janice are unable to provide the structure and consistency that Devon needs. They are unable to provide the level of discipline or supervision necessary for Devon. Devon needs above-average parenting to help her avoid harming herself. She needs a safe, stable, secure home. She does not receive this environment from her father or grandmother. We also note the father remains on the sex offender registry and never completed an offender's group or complete individual counseling. We agree with the juvenile court's conclusion, "it is contrary to the welfare of the child to be returned to the parental home or the guardian's home."

We affirm the decision of the juvenile court.

AFFIRMED.