

IN THE COURT OF APPEALS OF IOWA

No. 6-284 / 05-1761

Filed May 24, 2006

**IN THE MATTER OF THE GUARDIANSHIP
OF J.H.S, J.G.S, B.C.G, and A.R.G.,**

S.S., a/k/a S.L.,
Appellant.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz,
Associate Probate Judge.

A mother appeals an order granting permanent guardianship of her four
children to the maternal grandparents. **AFFIRMED.**

Catherine K. Levine, Des Moines, for appellant.

Suzanne Levitt, Drake Legal Clinic, Des Moines, for appellee.

Deanna Zinno of Handley, Block, Lamberti & Zinno, P.C., Ankeny, for
appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Maternal grandparents petitioned for a permanent guardianship of four of their grandchildren. The probate court granted the petition. On appeal, the children's mother contends the grandparents failed to rebut the statutorily prescribed preference for parents, over other guardians. On our de novo review of the record, we disagree.

Parents of a minor are preferred guardians only if the parents are "qualified and suitable." Iowa Code § 633.559 (2005). The children's mother, Stacy, did not satisfy these criteria. She used illegal drugs during much of the time she was raising her four children, Jacob, Joseph, Berthal, and Ana. By her own admission, she injected methamphetamine as recently as seven or eight months before the permanent guardianship hearing and also used cocaine and marijuana over the years. A guardian ad litem appointed for the children opined that Stacy's history of drug use would render it difficult for her to maintain sobriety.¹

The potential for relapse was not the only problem. Two months before the hearing, Stacy married a man who was on parole after having been convicted and imprisoned for second-degree sexual abuse. Stacy maintains her new husband was no threat to her children, as his conviction was based on conduct with his former wife. At a minimum, we believe her decision to marry this man at

¹ Despite this conclusion, the guardian ad litem recommended against a permanent guardianship with the grandparents, suggesting that the more appropriate solution was to have the children declared children in need of assistance subject to the jurisdiction of the Department of Human Services.

a time when she knew her parenting decisions were under scrutiny reflected poor judgment.

We turn to Stacy's care of the children. Several witnesses testified to her parenting deficiencies. The father of Berthal and Ana stated that he saw Stacy "mentally abuse" Jacob and Joseph. The father of Jacob stated Stacy was "vengeful" and "mean." Stacy's mother seconded this opinion, noting that Stacy swore at the children and called Jacob worthless. She also testified that she saw drug paraphernalia at Stacy's house, including an intravenous needle in the hands of Ana.

There was also evidence that the children were doing well in the care of their grandparents. The father of Jacob noticed significant improvements in his son's demeanor after his grandparents began caring for him. He testified the child "smiles again," and "opens up and talks, he laughs, he giggles, he jokes around." The father of Berthal and Ana said the children were "well-established" with the grandparents.

We recognize there was little evidence that Stacy used drugs in the six months preceding trial. We also recognize that the Department of Human Services did not attempt to have the children removed from her care despite several complaints to the agency about her drug use. Nevertheless, we concur with the probate court that "Stacy [] has not conducted herself as a good parent over a lengthy period of time." We also agree that Stacy's "past performance in relation to her children must be given weight" in assessing the children's best interests. Based on that performance, we concur with the probate court that a permanent guardianship with the children's maternal grandparents served their

best interests. *In re Guardianship of Stodden*, 569 N.W.2d 621, 623-24 (Iowa Ct. App. 1997).

AFFIRMED.