

IN THE COURT OF APPEALS OF IOWA

No. 6-334 / 06-0405
Filed May 10, 2006

**IN THE INTERSET OF M.O.,
Minor Child,**

**C.O., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A mother appeals the continued removal of her daughter from her home
and the order adjudicating her daughter a child in need of assistance.

AFFIRMED.

Timothy J. Tupper, Davenport, for appellant mother.

Neill Kroeger, Davenport, for father.

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

Carrie E. Coyle of Zamora, Taylor, Alexander, Woods & Frederick,
Davenport, for minor child.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

M.O. was born in March 1997. C.O. is her mother. M.O. was removed from C.O.'s custody in September 2005 because of unsanitary and unsafe conditions in C.O.'s home.

On December 8, 2005, M.O. was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) (physical abuse or imminent physical abuse by parent), 232.2(6)(c)(2) (child likely to suffer harm due to parent's failure to exercise care in supervising the child), and 232.2(6)(n) (parent's mental capacity or condition or drug or alcohol abuse results in child not receiving adequate care). The juvenile court's adjudicatory order includes the following findings:

The basis for the adjudication is the inability or failure of the mother to provide appropriate care, supervision and safety for her child. Because of the dynamics of the relationship between Mother and the child, and influence by parental substance abuse, mental health issues, anger and choice of behavior impacting the child by yelling at the child and pulling her hair, threats of abuse with manifestation of the child of defiance, anger, running away from home and seeking a stable, safe place for the child to live.

The resulting dispositional order entered on February 23, 2006, continued M.O.'s placement with relatives and approved the case plan proposed by the Iowa Department of Human Services (DHS). The dispositional order states:

That the placement of the child(ren) in the custody of [P.O. and D.O.] pursuant to the case plan approved by the Court is the least restrictive alternative to resolve the problems of the child(ren) and the family while minimizing the risk of further adjudicatory harm to the child(ren). The child is doing well in her relative placement in lieu of foster care. Mother has completed substance abuse treatment. She also participated regularly in her mental health care plan and takes medication as prescribed. She has yet to start with

remedial services regarding parenting and restoring a proper, healthy balance of power between parent and child. Also restoration of trust between parent and child is necessary. The parent and child need to work on communication skills also. The mother needs to establish a stable lifestyle in which the child can be assured that her needs will be consistently met.

On appeal, C.O. raises the following issue:

ISSUE I: THE TRIAL COURT ERRED IN CONCLUDING THERE WAS SUFFICIENT EVIDENCE TO REQUIRE CONTINUED REMOVAL OF THE CHILD FROM THE HOME OF THE MOTHER.

II. Standard of Review.

We review child in need of assistance proceedings de novo. *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994) (citing *In re Long*, 313 N.W.2d 473, 482 (Iowa 1981)). We consider “both the facts and the law, and we adjudicate rights anew.” *Id.* (quoting *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993)). We are not bound by the factual determinations of the juvenile court. *Id.* However, we do give the juvenile court’s findings weight, especially on the credibility of witnesses. *Id.*

III. The Merits.

Iowa Code section 232.99(4) states: “When the dispositional hearing is concluded, the court shall make the least restrictive disposition appropriate considering all the circumstances of the case.” If the court does not suspend judgment and continue the proceedings as provided in section 232.100, or permit the child’s parent to retain custody, the next least restrictive disposition is to transfer custody to a relative of the child. Iowa Code § 232.102.

The gist of C.O.’s argument is that she has substantially addressed the mental health and parenting issues necessitating M.O.’s removal, and the least restrictive disposition is to return M.O. to her custody. She cites testimony and

reports from social workers and mental health professionals noting the progress she has made in resolving those issues. C.O. also notes that the “balance of power between child and parent” is an issue of the juvenile court’s own making and was not a problem referred to by the mental health and social workers who prepared reports or testified at the dispositional hearing.

Contrary to C.O.’s assertions, the record indicates that she has not yet completed remedial services intended to improve her parenting skills. Moreover, although the social worker responsible for M.O.’s case noted C.O.’s progress, the consensus recommendation of the social work professionals involved in M.O.’s case was that she remain in out-of-home placement with relatives. For example, a February 16, 2006, report prepared by Bethany Family Services included the following summary and recommendations:

IV. Summary

During this reporting period since [M.O.’s] move to family placement, [C.O.] has verbalized a want to “re-start” services and participate in the expectations set forth by DHS to have [M.O.] returned to her home. The worker made several attempts, through times pre-arranged with [C.O.], to be allowed into [C.O.’s] home to conduct parenting sessions and to monitor [C.O.’s] home for appropriateness of living conditions, however, [C.O.] did not make herself available for these appointments. The atmosphere of [C.O.] and [M.O.’s] visits has greatly changed, there currently seems to be an air of being disconnected.

V. Recommendations

1. [M.O.] remains identified as a Child In Need of Assistance.
2. [M.O.] remains in her current placement with the Department of Human Services supervision.
3. [C.O.] participates in parenting services to address age appropriate communication and appropriate parent/child roles within the family.
4. [M.O.] continues to receive supervised visitation with her mother at the Bethany office.

5. [C.O.] continues to seek mental health treatment and follow through with all recommendations made by mental health professionals.
6. [D.O. and P.O.] continue to provide safe, clean, stable home environment for [M.O.].
7. [D.O. and P.O.] continue to meet [M.O.'s] daily needs.

We find the juvenile court made the least restrictive disposition based on the evidence presented at the dispositional hearing. The juvenile court's dispositional order is therefore affirmed in its entirety.

AFFIRMED.