

IN THE COURT OF APPEALS OF IOWA

No. 6-504 / 06-0110

Filed July 26, 2006

**IN THE MATTER OF THE GUARDIANSHIP
OF J.M.E. and K.D.T.**

S.E.,

Petitioner-Appellant,

vs.

T.E. and L.E., Guardians,

Respondents-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge.

Parent appeals from a district court order denying her application to terminate a guardianship. **AFFIRMED.**

Jeffrey H. Bush of Bush Law Offices, Oakland, Nebraska, for appellant.

Don Peterson, Council Bluffs, for appellees.

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

HUITINK, J.

Sherry Blakeman (f/k/a Sherry Edison) appeals from a district court order denying her application to terminate a guardianship. We affirm.

I. Background Facts and Proceedings

Sherry is the mother of Jessica, born in 1989, and Kimberly, born in November 1993.¹ She became addicted to pain medication following a car accident in 1992 and continued “taking pills” until 1998. Sometime in 1996 or 1997, Sherry, Jessica, and Kimberly moved in with Terry and Laurie Edison, Sherry’s father and stepmother. Sherry moved out due to a conflict with Laurie, leaving the girls in the care of Terry and Laurie.

In April 1997 the district court ordered that Terry and Laurie be appointed guardians of Jessica and Kimberly. Kenneth Thomas,² Kimberly’s father, consented to the guardianship. Sherry failed to appear at the hearing. The district court found Sherry had avoided service by the sheriff and had been informed of the hearing by Terry and Laurie. Jessica and Kimberly were ages seven and three at the time the guardianship was established.

In May 2004 Sherry filed a pro se “motion to review.” No action was taken on the motion. In July 2005 Sherry filed a petition to terminate the guardianship. A hearing on the matter took place in December 2005.

¹ A third daughter, Janey, was born in 1992. Janey was in the custody of other relatives until 1999, when she was returned to Sherry’s custody following court proceedings.

² Kenneth and Sherry were married, but separated in 1994. They divorced in 2004, and Sherry remarried Phillip Blakeman in July 2005. Sherry testified she and Phillip had been together for a total of two and one-half years at the time of the guardianship termination hearing in December 2005.

At the time of the hearing, Jessica and Kimberly were ages sixteen and twelve, respectively. According to Terry and Laurie, Jessica does well in school and gets along well with others. She baby-sits and volunteers in the community. A neighbor testified she had recently hired Jessica to work for her at an after-school daycare center, and added “her work ethic is . . . something that you don’t see often in a girl her age.” Laurie testified that although Jessica was doing well in school, “she’s not the academic kind of student,” and requires structure and support from Laurie and Terry to keep her focused on school. Jessica testified she preferred to remain in the custody of her grandparents, and wanted her sister Kimberly to live with her as well.

In 1998 Kimberly was diagnosed with attention deficit hyperactive disorder (ADHD). According to Laurie, prior to the diagnosis Kimberly was “out of control,” and was suspended from kindergarten for biting the principal. Patricia Hardt, a psychiatric nurse with forty-three years’ experience who has been treating Kimberly since 1998, testified Kimberly was “extremely hyperactive” and “behaviorally out of control” when she first came in for treatment. Nurse Hardt further testified that although the treatment Kimberly receives, including medication, has led to improvements in her behavior and performance, “she still has a lot of volatility and needs a great deal of structure, both at home and in school, in order for her to perform.” She explained that previous attempts to reduce Kimberly’s medication levels have proved unsuccessful. Nurse Hardt opined, “[I]f a change [in custody] were to occur, it would be very, very detrimental to her success because, again, the transitions are difficult.”

Laurie described the daily routine the family follows to make sure both girls—especially Kimberly—are ready for school, and Kimberly takes her medication. Terry testified it takes about two days for Kimberly to “get back into the routine of . . . doing her homework” after a weekend visitation with her mother. He also expressed concern over Sherry’s ability to provide stability for the children, explaining that Sherry has been “on and off again with different relationships” over the past nine years. He testified, “I think she’s got an agenda in life, and I don’t know if it totally concerns the kids.”

Sherry expressed some skepticism over Kimberly’s ADHD diagnosis. She testified she would take Kimberly to her own physician if the guardianship was terminated, “and if he says she has ADHD, well, then I will continue the medications. . . . I will give it to her if she actually does have ADHD, but other than that, I’m against it.”

The apparent tension between Sherry and Laurie was reflected in their differing accounts of Sherry’s involvement in her daughters’ lives since the establishment of the guardianship. According to Sherry, she has not attended school activities or medical appointments because Laurie has refused to keep her informed of the girls’ schedules. Laurie testified she has asked Sherry to go with her to Kimberly’s medical appointments, but Sherry has refused.

Following the hearing, the district court filed its order denying Sherry’s petition to terminate the guardianship. The court found that Sherry “continues to have some instability in her life and is not a fit person to parent these children full time at this time.” The court further found,

[T]he only parent/child relationship that these children have enjoyed for the last eight (8) years is with their grandfather and step-grandmother who have provided an environment described by [a witness/neighbor] as good, trusting and loving. Their mother, while having admitted affection for her children has been unable to assume the role of parent for some eight years. The court finds that she has not developed an adequate parent/child relationship with her children.

Sherry appeals, arguing the district court erred in (1) finding she was not fit to have custody of the children and (2) placing undue reliance on the testimony of Nurse Hardt.

II. Standard of Review

Our review of this equitable action is de novo. *In re B.J.P.*, 613 N.W.2d 670, 672 (Iowa 2000). We give weight to the trial court's findings of fact, especially on matters of credibility, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Discussion

The parents of a minor child, if suitable and qualified, are preferred over all others as the child's guardian and custodian. Iowa Code § 633.559 (2005); *In re Guardianship of Stodden*, 569 N.W.2d 621, 623 (Iowa Ct. App. 1997). The presumption of parental preference, however, is rebuttable. *Stodden*, 569 N.W.2d at 623. The guardians bear the burden of proof to rebut the presumption which favors Sherry by establishing the parent is not a suitable parent and the children's best interests require Jessica and Kimberly remain in their care. *Id.* In determining the children's best interests, we must "take into account the strong societal interest in preserving the natural parent-child relationship." *In re Guardianship of Knell*, 537 N.W.2d 778, 781 (Iowa 1995). We must also

consider the long-range interests as well as the immediate interests of the children. *Id.*

After de novo review, we find the guardians have sufficiently rebutted the presumption that it is in the children's best interests to award custody and guardianship to Sherry. While we do not agree with the guardians that Sherry has "abandoned" the children, the record reveals she has not taken action to affirmatively assume the role of parent after nine years, instead limiting her role in parenting the children to exercising weekend visitation. *Cf.* Iowa Code § 600A.1 (stating that the best interests of the child in termination proceedings "requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent," including "the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life"). Sherry testified she "didn't know what her rights were," although she admitted she had gone to court to regain custody of her daughter Janey in 1999. Although she testified as to the guardians' attempts to keep her from obtaining certain information about the girls, the district court implicitly found her testimony less credible than that of Laurie, who testified as to her attempts to inform Sherry of the girls' activities and appointments. In addition, Kimberly's third and fourth grade teacher testified she only met Sherry one time over the two-year period, when Sherry came to a Valentine party at the school.

The district court found Nurse Hardt's testimony "especially telling." The court's characterization of her testimony does not rise to the level of "undue

reliance” on the testimony, as Sherry suggests. Based on testimony in the record from Nurse Hardt, the guardians, and others, Kimberly’s need for stability and structure is great. “[I]f return of custody to the child’s natural parent ‘is likely to have a seriously disrupting and disturbing effect upon the child’s development, this fact must prevail.’” *Knell*, 537 N.W.2d at 782 (quoting *Painter v. Bannister*, 258 Iowa 1390, 1396, 140 N.W.2d 152, 156 (1966)). Sherry’s testimony indicated a reluctance on her part to accept the ADHD diagnosis, which leads this court to question her willingness and ability to provide Kimberly with the same structure and stability she has now with the guardians. Sherry’s skepticism reflects on her ability to provide the appropriate environment for Jessica, who, according to the guardians, also needs structure and guidance, particularly concerning her schoolwork.

We are further guided by the principle that

if a person having lawful care of a child has properly provided for a child’s social, moral and educational needs for a substantial period of time and the child has become attached to that environment and those responsible for his [or her] welfare and happiness, a court is not justified in transferring that custody to another except for the most cogent reasons.

Id. (quoting *Doan Thi Hoang Anh v. Nelson*, 245 N.W.2d 511, 517-18 (Iowa 1976) (citations omitted)). We conclude the children’s best interests require they remain in the guardians’ care. Accordingly, we affirm the decision of the district court.

AFFIRMED.