

**IN THE COURT OF APPEALS OF IOWA**

No. 6-768 / 06-0902  
Filed October 25, 2006

**IN THE INTEREST OF M.C., R.C. and A.C.,  
Minor Children,**

**T.C., Father,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Jane F. Spande, District Associate Judge.

A father appeals from the juvenile court's permanency order changing the goal from reunification with the father to placement with the mother. **AFFIRMED.**

William C. Croghan, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Harold L. Denton, County Attorney, and Rebecca Belcher, Assistant County Attorney, for appellee.

Mary McGee Light, Public Defender, Cedar Rapids, for appellee-mother.

Deborah Skelton of White & Johnson, P.C., Walford, guardian ad litem for minor children.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**SACKETT, C.J.**

Troy, the father of Monica, born in 1992, Aryal, born in 1993, and Randi, born in 1996, appeals from the juvenile court permanency order that changed the goal from reunification with him to placement with their mother, Mary. He contends the court erred in finding (1) the State had made reasonable efforts to reunify the children with him, (2) the change served the best interests of the children, and (3) that he was not making reasonable progress toward reunification with the children. We affirm the modification of the permanency order.

**I. Background**

Troy and his daughters came to the attention of the Department of Human Services in May of 2004 because of concerns about physical discipline. Monica had significant bruises following discipline by Troy. He also disciplined her for reporting the problem. The protective assessment, which yielded a founded abuse report, noted behavioral problems, family problems, concerns about Troy's use of illegal drugs, and problems at school caused by the girls' defiance, disrespect for authority, and poor anger management. As a result of the founded report, Monica was placed with her mother, stepfather, and two step-siblings. Troy agreed to cooperate with services. After a fire destroyed Troy's home, Aryal and Randi also were placed with their mother in January of 2005, with continuing supervision by the Department.

An incident involving Troy's use of marijuana occurred on the day Aryal and Randi were picked up for transfer to their mother's care. At the beginning of this case, Troy lived in Linn County and Mary lived in Rock Island, Illinois. Because of past legal problems, Troy does not have a driver's license. To facilitate visitation and reunification with the girls, Troy moved to Davenport in late 2005. He lives with

his mother, sister, and his sister's boyfriend. He is self-employed as an auto mechanic. Following his move to Davenport, visitation increased and included semi-supervised as well as supervised visits.

In subsequent reviews the court did not make any significant changes in the girls' placement. At the May 2006 permanency hearing, the State, the Department, the guardian ad litem, and Mary all requested that the court change the permanency goal from reunification with Troy to placement with Mary. The court considered Troy's lack of suitable permanent housing, his lack of employment, his past drug use and refusal to provide drug screens, his parenting deficiencies. It also considered Mary's parenting deficiencies and the negative, adversarial relationship between Troy and Mary and how it affects the girls. The court found:

It is painfully clear from the evidence presented that neither parent has or is a model parent as to these children. . . . It is also clear that these children are less likely to grow positively in their relationship with one another or with either parent until certainty in placement is established, regardless of the strengths and shortcomings of either parent. The court concurs with the opinion of Monica's past therapist that placement in foster care is attractive to separate the children from the warfare of their parents and that such placement would best afford these children the time needed to heal emotional harms from each parent. Such placement would be the most likely to allow these girls to mature into healthy adults who accept responsibility for actions and inactions that cause harm, to accept responsibility for alleviating or eliminating that harm, and to do so in a manner least likely to cause further harm to self or others. The court, however, also concurs that the need of these children for certainty and stability in placement outweighs the deficiencies in their current placement, that greater harm could likely result, at least at this time, from transfer to a neutral environment where the children would be emotionally safe. Despite continuing problems in the relationship between the parents, and deficiencies in [Mary's] household, not all of which can be attributed to Mary, [she] appears willing to participate and seek out services for those shortcomings and is willing to do so because of their benefit to these children and her blended family, not because it is required of her under a case plan or to achieve any advantage against Troy. The evidence does not indicate the same as to Troy.

The court changed the permanency goal from reunification with Troy to placement with Mary “as another planned permanent living arrangement.” See Iowa Code § 232.104 (2005). Troy appeals.

## **II. Scope of review**

Our review of permanency orders is de novo. We review both the facts and the law and adjudicate rights anew on the issues properly presented. We give weight to the juvenile court's findings, but are not bound by them.

*In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005) (citations omitted).

## **III. Discussion**

Troy claims:

The court erred in finding that the State had made reasonable efforts to reunify the children with their father, appellant [Troy], and did not serve the best interests of the children. The court erred in finding that appellant was not making reasonable progress toward reunification with the child.

The State responds that Troy failed to preserve error in that he waited until the permanency hearing to raise the reasonable efforts claim and does not identify any different or additional services the Department failed to provide.

Mary responds (1) services were not requested during review hearings, (2) the only testimony concerning best interests was that it was not in the children's best interest to be with Troy, and (3) Troy had not made adequate progress toward reunification.

*A. Reasonable efforts.* Troy has had parenting skill development assistance, family counseling, drug screens, and supervision of his visitation with the children. He has benefited from the services provided. Other than the bare assertion the State did not make reasonable efforts to reunite him with his daughters, he does not point to any other or additional services requested. He did not request services at

the hearing on modification of the permanency order. The court found services had been offered to Troy to alleviate the problems that led to the removal of his daughters, but that the children could not be returned to his care at the time of the hearing or within the foreseeable future. We find the services offered were reasonable and were directed toward correcting the problems that led to the removal and that prevented reunification.

*B. Best interest.*

[O]ur responsibility in a modification of a permanency order is to look solely at the best interests of the children for whom the permanency order was previously entered. Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs.

*In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). The juvenile court found termination of parental rights was not in the children's best interest. It denied the request for concurrent jurisdiction because it would be likely to prolong the conflict within the family. The court granted the change in venue to Scott County. It weighed the parenting abilities and deficiencies of both parents. The court found the scale tipped in favor of continued placement with Mary over reunification with Troy or placement in a neutral setting. From our de novo review of the record before us, we find the modification of the permanency goal is in the best interest of the girls, given the available options.

*C. Troy's progress.* The court discussed at length Troy's efforts to comply with case plan requirements and to make it easier to exercise visitation. We do not see any finding by the court that Troy was not making reasonable progress. Troy is trying to improve his parenting. He is making progress, but waited too long to begin.

**IV. Conclusion**

These girls need stability and permanency. Both parents are deficient in their parenting skills and both have placed their children in the middle of their mutual antagonism. We cannot disagree with the juvenile court's conclusion Mary will provide more stability and will get the girls the help they need. We affirm the modification of the permanency order.

**AFFIRMED.**