

IN THE COURT OF APPEALS OF IOWA

No. 7-735 / 07-1501
Filed October 24, 2007

**IN THE INTEREST OF D.J.W.,
Minor Child,**

**P.C., Grandmother,
Intervener-Appellant.**

Appeal from the Iowa District Court for Audubon County, Mark J. Eveloff,
District Associate Judge.

Maternal grandmother appeals from the juvenile court's ex parte
temporary removal and dispositional orders placing D.J.W. with his paternal
grandparents. **AFFIRMED.**

Eric Borseth of Borseth Law Offices, Altoona, for appellant maternal
grandmother.

Christine Sand, Guthrie Center, for mother.

Karen Mailander, Anita, for father.

Joseph Bertogli, Des Moines, for intervener paternal grandmother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Francine Andersen, County Attorney, for appellee State.

James Tinker, Audubon, for minor child.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

HUITINK, P.J.

Maternal grandmother appeals from the juvenile court's ex parte temporary removal and dispositional orders placing D.J.W. with his paternal grandparents. We affirm.

I. Background Facts and Proceedings

Pursuant to an ex parte order, D.J.W. was removed from his mother's care on March 7, 2007, because of domestic violence, parental substance abuse, and his need for medical treatment,. Custody was transferred to the Iowa Department of Human Services (DHS) for foster care placement. After a temporary removal hearing, the juvenile court determined D.J.W. should continue to be placed out of the home and transferred custody to his maternal grandmother subject to DHS supervision. On March 14, 2007, the State filed a child in need of assistance (CINA) petition under Iowa Code sections 232.2(6)(b), (c)(2), (l), and (n) (2007). On June 18, 2007, the juvenile court adjudicated D.J.W. CINA under sections 232.2(6)(b), (c)(2), and (n) and ordered his placement remain with his maternal grandmother.

On June 29, 2007, DHS filed an application for an ex parte removal order, citing the maternal grandmother's interference with reunification efforts. DHS also cited the maternal grandmother's attempt to place D.J.W. with an adoptive family, as well as her refusal to allow D.J.W.'s father visitation on Father's Day. The juvenile court granted DHS's application and transferred custody to DHS for foster care placement.

On August 15, 2007, the juvenile court issued a dispositional order. In that order, the juvenile court concluded D.J.W. could not be returned to his

parents, custody with the maternal grandmother was not appropriate, and D.J.W. should be placed with his paternal grandmother and her husband. The juvenile court transferred custody to the paternal grandmother and her husband subject to DHS supervision.

On appeal the maternal grandmother argues the juvenile court erred in (1) granting the ex parte removal order and failing to return D.J.W. to her custody and (2) placing custody of D.J.W. with the paternal grandmother and her husband. She requests D.J.W. be returned to her care, or in the alternative, be placed in foster care.

II. Scope of Review

Our scope of review in CINA proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law and adjudicate the parties' rights anew. *Id.* 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. Ex Parte Removal Order

Initially, we address the State's argument that any issues concerning the validity of the June 29, 2007 ex parte removal order are moot. We agree. "Any error committed in granting the temporary ex parte order cannot now be remedied." *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994). "We cannot go back in time and restore custody based on alleged errors in the initial removal order." *Id.*

IV. Dispositional Order

The maternal grandmother also argues custody should not have been transferred to the paternal grandmother and her husband upon disposition. Rather, D.J.W. should have been placed in foster care. “When the dispositional hearing is concluded the court shall make the least restrictive disposition appropriate considering all the circumstances of the case.” Iowa Code § 232.99(4).

[T]he court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

- a. A parent who does not have physical care of the child, other relative, or other suitable person.
- b. A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. The department of human services.

Id. § 232.102(1). According to our supreme court, “chapter 232 favors relative placements over nonrelative placements.” *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995).

The juvenile court made the following findings of fact:

[The father’s counsel] stated her client’s first choice of placement for [D.J.W.] was with his parents. Both parents either testified or stated they did not have any concern with reunification efforts being made available to them if the child was placed with the [paternal grandmother and her husband]. Although the Court is concerned with [the maternal aunt’s] testimony [regarding the paternal grandmother’s alleged use of marijuana], the Court finds the home study of the [paternal grandmother and her husband] is extremely favorable and therefore finds the child should be placed in the care custody and control of [the paternal grandmother and her husband] so long as [the father] does not reside in the home. This is due to the pending criminal charges [the father] has, which includes felony drug charges.

The record includes abundant evidence supporting these findings of fact, and we adopt them as our own. Like the juvenile court, we conclude placing D.J.W. with

his paternal grandmother and her husband was appropriate under the circumstances.

We therefore affirm the juvenile court's ex parte temporary removal and dispositional orders.

AFFIRMED.