

IN THE COURT OF APPEALS OF IOWA

No. 7-795 / 07-1551
Filed October 24, 2007

**IN THE INTEREST OF D.B.-C. and
K.B.-C.,
Minor Children,**

**H.L.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A mother appeals from a district court's permanency order. **AFFIRMED.**

Mark Milder, Waverly, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn, Assistant County Attorney, for appellee State.

Heather Feldkamp of Feldkamp Law Office, P.C., Waterloo, for minor children.

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

VOGEL, P.J.

A mother appeals a permanency order that transferred guardianship of her two children to their maternal grandparents.¹ She argues that the district court erred in denying her request for a six-month continuance of the permanency hearing. We affirm.

Heather is the mother of D.B.-C., who was born in 1997, and K.B.-C., born in 1999. In May of 2006, the children were removed from the custody of their mother² for lack of supervision and abuse, which had resulted in physical injuries to the children. The children were placed with their grandparents. Subsequently, the children were adjudicated children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), & (e) (2005) and custody of the children remained with the Iowa Department of Human Services (DHS) with placement continuing with their grandparents. Heather was offered many services to assist her to work toward reunification, including family-centered services, mental health counseling, substance abuse treatment, and supervised visitation. Although Heather participated in some services, she failed to make sufficient progress that would allow the children to be safely returned to her care. The district court held review hearings in January and March of 2007, but each hearing resulted in a finding that Heather was unable to have the children returned to her care. In August of 2007, after a permanency hearing was held, the district court ordered that guardianship of the children be transferred to their

¹ It appears from the record that the grandparents are the maternal grandmother and her husband.

² The father of both children did not appeal the court's order. His rights are not at issue in this appeal.

grandparents pursuant to Iowa Code section 232.104. The district court also ordered that visitation between Heather and the children be allowed at the discretion of the grandparents.

Heather contends that the district court should have deferred the permanency hearing for six months because she had made improvements in the prior six months. We review permanency orders de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). “Denial of the motion to continue must be unreasonable under the circumstances before we will reverse.” *Id.* Our primary concern is the best interests of the children. Iowa R. App. P. 6.14(6)(o).

At the time of the permanency hearing, the children had been out of their mother’s care and custody for over a year. According to the DHS case manager, Heather had not made any progress toward regaining custody of the children since the prior review hearing and visitation had been increased to fully supervised. Although Heather has not had a positive drug test since January of 2007, the last drug test Heather submitted to in June of 2007 resulted in an abnormal test result and was considered an altered sample. The DHS worker testified that she had concerns over both Heather’s substance abuse and mental health problems and an ongoing relationship with an inappropriate male, who had a history of criminal activity and ongoing drug use. Heather maintained this relationship knowing that it was an obstacle to regaining custody of her children, because it prevented her from moving forward in overcoming her own problems. Additionally, the DHS worker testified that she did not believe the children would

be able to return to Heather's care when considering Heather's track record of failing to put the children first. See *In re J.E.*, 723 N.W.2d 793, 645 (Iowa 2006) (“[W]e look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future.”). The most recent report from the children's guardian ad litem stated that the children “need the stability of knowing they will stay [with their grandparents] and will have the structure and protection that home provides them.” The children have been in the care of their grandparents for over a year, where they have a safe and stable environment that has allowed them to make significant progress. They should not be forced to wait for Heather to become a responsible parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). “At some point, the rights and needs of the [children] rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Additionally, it is in the children's best interests that guardianship is transferred to their grandparents. *In re J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests). We find the district court did not abuse its discretion in denying Heather's motion for a continuance and affirm the permanency order.

AFFIRMED.