

**IN THE COURT OF APPEALS OF IOWA**

No. 8-047 / 07-2064  
Filed February 13, 2008

**IN THE INTEREST OF A.D.M.,  
Minor Child,**

**A.D.M., Minor Child,  
Appellant.**

---

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

The child in interest appeals the district court's decision denying her motion for modification of the current permanency order. **AFFIRMED.**

Dennis M. Guernsey, Waterloo, for appellant child.

Michael Bandy, Waterloo, for father.

Christina Shriver, Hudson, for mother.

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

Sara Kersenbrock, Waterloo, for intervener.

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, guardian ad litem.

Tamara Beall-Thomas, Tama, for intervenor Sac and Fox Tribe of the Mississippi in Iowa.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**MAHAN, P.J.**

A.D.M., the child in interest, appeals the district court's decision denying her motion for modification of the current permanency order. We affirm.

**I. Background Facts and Prior Proceedings**

A.D.M. is a fifteen-year-old child of Native American heritage. On November 9, 2004, her mother demanded that she be removed from her care due to A.D.M.'s aggressive and uncontrollable behavior. Her father was also unwilling to provide for her care. A.D.M. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (k) (2003) and placed in the custody of the Iowa Department of Human Services (DHS) for family foster care placement. She was eventually placed with Mary, an attorney and licensed foster care parent. To date, neither parent is in a position to resume custody of A.D.M.

A.D.M. made considerable progress during her two years with Mary. Her unruly behavior diminished, she attended school regularly, and she received treatment for her developmental delays. A.D.M. also developed a very strong bond with Mary. Over time DHS began to doubt Mary's ability to provide proper care for A.D.M. DHS was concerned about Mary's ability to adequately supervise the child and her failure to inform DHS that other people were living in the family home. DHS was also very concerned with Mary's ongoing association with a man known to have a substantial criminal record. Mary had agreed to keep this man away from A.D.M., but she did not follow through with the agreement and allowed the man to have a key to the family home. As a result,

on June 29, 2007, the DHS refused to renew Mary's foster care license, and A.D.M. was placed in a different foster home.

Mary filed a motion to intervene asking the court to return A.D.M. to her care. An attorney appointed for A.D.M. filed a similar motion to modify the court's permanency order.

Over the next few months, Mary communicated with A.D.M. via email. These emails encouraged A.D.M. to hide information from her new foster parent, DHS caseworker, and ultimately the juvenile court judge. Mary also told A.D.M. to be careful about what she said because "[t]hey will try to get you to feel comfortable and talking about stuff and then use it against us." In one message, Mary told A.D.M. to delete this message right away to keep the new foster parent from reading the email.

At the hearing, A.D.M.'s mother informed the court that she wanted A.D.M. returned to Mary's care. However, A.D.M.'s father, her guardian ad litem, the DHS caseworker, and a representative from the Sac and Fox Tribe of the Mississippi in Iowa all recommended that she not be returned to Mary's care.

The juvenile court denied A.D.M.'s motion. A.D.M. now appeals, claiming the court erred in refusing to modify the current placement so that A.D.M. could return to Mary's care. The State contends the juvenile court correctly denied the motion to modify and also challenges whether she can attempt to modify a permanency order simply because she disagrees with her specific placement.

## **II. Standard of Review**

We review a permanency order de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review both the facts and the law and adjudicate rights anew.

*Id.* Although we give weight to the juvenile court's findings of fact, we are not bound by them. *Id.* "The best interests of the child are paramount to our decision." *Id.*

### III. Merits

A.D.M. contends the court erred when it did not transfer guardianship and custody to Mary pursuant to Iowa Code section 232.104(2)(d) (2007). This section presents the court determining permanency with the following options:

- (1) Transfer guardianship and custody of the child to a *suitable person*.
- (2) Transfer sole custody of the child from one parent to another parent.
- (3) Transfer custody of the child to a *suitable person* for the purpose of long-term care.
- (4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best interest, order another planned permanent living arrangement for the child.

Iowa Code § 232.104(2)(d) (emphasis added).

A.D.M. concedes that Mary is no longer a licensed foster care provider, but argues Mary is a "suitable person" and there is no compelling reason to place her with someone else. A.D.M. contends Mary has been her only source of security and stability and she will regress if she is not returned to Mary's care.

Upon our de novo review of the evidence, we find a return to Mary's care is clearly not in A.D.M.'s best interests.<sup>1</sup> We, like the juvenile court, find there is not a high degree of structure or supervision in Mary's home. A.D.M. has reported having sexual relations with boys when she was left unsupervised in

---

<sup>1</sup> We assume, arguendo, that A.D.M. is not prohibited from making a motion to modify a permanency order placing her in DHS custody on the ground that she prefers a different placement.

Mary's home. Mary also allowed A.D.M. to have unrestricted contact with an individual with a significant criminal history, even though she had agreed to prohibit any contact between A.D.M. and the individual. This, when coupled with Mary's failure to inform DHS that other individuals were living in the family home and intermittently supervising A.D.M., raises serious doubts about whether Mary is a suitable person for transfer of guardianship and custody for A.D.M.'s care. Finally, we cannot ignore Mary's blatant attempts to undermine the juvenile court's efforts to protect the best interests of this child by advising A.D.M. not to fully communicate with her foster parent or DHS.

In light of all of the foregoing evidence, we affirm the juvenile court's decision to deny the requested modification.

**AFFIRMED.**