

IN THE COURT OF APPEALS OF IOWA

No. 8-099 / 07-1901
Filed February 13, 2008

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

**H.J., f/k/a H.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Tama County, Casey D. Jones,
District Associate Judge.

A mother appeals from the dispositional order transferring custody of her
children out of her care. **REVERSED.**

Darrell G. Meyer, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Brent D. Heeren, County Attorney, for appellee.

Nancy L. Burke, Toledo, for D.H., father.

Norma J. Meade of Moore, McKibben, Goodman, Lorenz & Ellefson,
L.L.P., Marshalltown, for J.R., father.

Jennifer Steffens of Bennett, Steffens & Grife, P.C., Marshalltown,
guardian ad litem for minor children.

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

EISENHAUER, J.

A mother appeals from the juvenile court's dispositional order in a child in need of assistance (CINA) action. She contends the court erred in transferring custody of her children out of her care. We review this claim de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother has three children, now thirteen, nine, and eight years old. Douglas is the father of the oldest child and Jason is the father of the younger two. All three children were in the physical and legal care of their mother before these proceedings commenced. The oldest child was removed from his mother's care on July 20, 2007, and returned after a removal hearing on July 26. He was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(n) (2007) at the removal hearing. The other two children were adjudicated CINA pursuant to section 232.2(6)(n) on September 6, 2007. The mother has been married to Neil since June 2007. The adjudication order prevents any unsupervised contact between the children and Neil.

At an October 22, 2007 dispositional hearing, the court transferred custody of the oldest child to his paternal grandparents while custody of the two younger children was transferred to their father. The Department of Human Services recommended the change because of concerns over the mother's "lack of stability." The court acknowledged that "stability concerns were present at the time of adjudication," but found there had been no improvement despite the fact the mother has done "almost everything that is expected of her." The elementary school counselor for the two younger children described them as getting along well with their peers and as polite and respectful. They are in special education

and have good grades. She suggested they were struggling emotionally at the beginning of the 07-08 school year but by the time of the dispositional hearing in October were doing better. The court concluded the transfer of custody was in the children's best interest.

Iowa Code section 232.102(1) (2007) allows the court to transfer custody of the children at a dispositional hearing to a parent or other relative who does not have physical care of the child. Custody should not be transferred unless the court finds clear and convincing evidence that:

- (1) The child cannot be protected from physical abuse without transfer of custody; or
- (2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

Iowa Code § 232.102(5)(a). The court made no such findings and on our de novo review we find none. We are aware the juvenile court has scheduled a hearing on February 6 to consider a request by the mother for return of the children. We also note the grant of concurrent jurisdiction so the ultimate custody decision may be made by the district court.

We conclude the evidence fails to establish the grounds to warrant transfer of custody from the mother. Therefore we reverse the transfer of custody.

REVERSED.