

**IN THE COURT OF APPEALS OF IOWA**

No. 8-640 / 08-1065  
Filed August 27, 2008

**IN THE INTEREST OF K.S.,  
Minor Child,**

**K.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
District Associate Judge.

A father appeals a juvenile court permanency order establishing  
guardianship of his child with her maternal grandmother. **AFFIRMED.**

Barbara Maness, Davenport, for appellant father.

Stephen Newport of Newport & Newport, P.L.C., Davenport, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Gerda Lane, Assistant County  
Attorney, for appellee State.

John Molyneaux, Davenport, for minor child.

Considered by Sackett, C.J., and Mahan and Vaitheswaran, JJ.

**MAHAN, J.**

Keith appeals a juvenile court permanency order establishing guardianship of his child, Kaitlyn, with her maternal grandmother. We affirm.

**I. Background Facts and Proceedings.**

Keith and Jessica are the parents of Kaitlyn, born in June 2004. They have never married. Keith lived with Jessica and her daughter, Cierra, born in October 2002, at the time of Kaitlyn's birth.<sup>1</sup> The two later separated and allegations of domestic violence were made. Since March 2007, Keith had regular visits with Kaitlyn every other weekend and overnights on Wednesdays. Since the summer of 2007 Keith has resided in a trailer owned by his female housemate who allows Keith to live with her without any financial responsibility, except for providing food stamps for groceries.

Keith is trained as a mechanic, but is unemployed due to a back injury for which he is awaiting surgery. He received a workers' compensation settlement of \$47,000 for the injury. He is able to earn some money by mowing lawns, shoveling snow, and doing odd jobs as a mechanic. Keith does not pay any support for Kaitlyn.

In August 2007 Kaitlyn was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (2007). Cierra was also adjudicated a CINA at that time. The adjudication was based on Jessica's chronic inability or failure to provide adequate care and supervision for the children because of mental health and substance abuse problems. The court ordered removal of the children on August 6, 2007. However, Jessica had

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<sup>1</sup> Cierra is not the child of Keith, and is not a party to this appeal.

voluntarily placed the children in the custody of Jessica's mother, Kristi, in January 2007, and the children have remained in Kristi's home since that time.<sup>2</sup>

Following the Iowa Department of Human Service's (DHS) reasonable efforts to reunify the children with Jessica, the permanency hearing was held in June 2008. The court determined that reunification with Jessica was not feasible or safely possible. With regard to Keith, the court noted that he had participated in the services provided by DHS and had regularly visited Kaitlyn. Further, the court acknowledged that DHS recommended placement of Kaitlyn with Keith with a transition to occur over a period of several months with services provided by DHS. However, the court ultimately found the children were very strongly bonded to each other and to their grandmother with whom they had lived for most of their lives.

In making its decision, the court stated:

The Department's recommendation is for placement of Kaitlyn with her father with a transition to occur over the next few months with services to be provided through the therapist for the children, Cathy Clark. The concern the Court has is that this is an experiment primarily in the best interests of the father with potential devastating consequences to Kaitlyn. The child is being separated from the two most important constants in her life, that being her sister Cierra and her grandmother. That she would see them regularly is not the same thing. It is hoped that with therapy she can cope with this sufficiently, that there is a minimum destructive consequence to this course of action. There will be significant consequences to her nonetheless. The Court's view is that Kaitlyn's best interests are to remain with her grandmother and to remain with her sister. The visitation with the father goes well and is a known benefit to the child.

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<sup>2</sup> The children also lived with their great aunt, Kelly, for a short period while Kristi was not able to comply with DHS expectations regarding Jessica's contact with the children.

The court therefore determined it was in the best interests of both children that they be placed in the guardianship and custody of their grandmother. Keith appeals with regard to Kaitlyn's placement.

## **II. Scope and Standard of Review.**

Our review of permanency orders is de novo. *In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005). We review both the facts and the law and adjudicate rights anew on the issues properly presented. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We give weight to the juvenile court's findings, but are not bound by them. *Id.* Our primary concern is the child's best interests. *Id.*

## **III. Merits.**

Keith argues the juvenile court erred in placing Kaitlyn in a guardianship with her grandmother and requests that she be placed in his custody. Alternatively, Keith requests the permanency hearing be continued and Kaitlyn be transitioned to his home over an approximate three-month period with monitoring by DHS with the child to be placed in his custody at the end of the transition period.

The court determined that such a transition would have potentially devastating consequences to Kaitlyn. While the record clearly shows that Keith loves his child and that he has maintained regular visitation and participated in services provided by DHS, our primary concern is Kaitlyn's best interests. We are unable to find that she could likely be placed in Keith's custody within three months without further adjudicatory harm. Keith has not provided any support payments for Kaitlyn. He received a \$47,000 workers' compensation settlement, but none of this settlement went to the support or care for Kaitlyn, with the

exception of some clothing and toys for her to use only when she is in his home. Keith is unemployed and lives with a female housemate in a trailer she owns. He does not have any financial responsibility, and his continued living arrangement is at his housemate's discretion. Furthermore, allegations of domestic violence have been made against Keith. He has completed the batterer's education program and has participated in anger management classes; however, the record reflects that Keith has a serious anger management problem.<sup>3</sup>

Kaitlyn has been through several years of turmoil and uncertainty. She needs and deserves the stability and consistency she finds with her grandmother. It is unlikely Kaitlyn could find such stability and consistency with Keith now or in three months. It is not in Kaitlyn's best interests to have the permanency order reversed or extended. The district court did not err in establishing guardianship of Kaitlyn with her maternal grandmother.

**AFFIRMED.**

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<sup>3</sup> Many of the findings by the juvenile court are found on page three of the permanency order. This page was omitted from the petition on appeal filed by the father, but is found in the record submitted with the petition on appeal.