

IN THE COURT OF APPEALS OF IOWA

No. 8-644 / 08-0969
Filed September 17, 2008

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

**N.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Clayton County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals the juvenile court's refusal to modify the permanency
order and return her child, S.A., to her home. **AFFIRMED.**

Kevin Schoeberl of Story & Schoeberl, Cresco, for appellant mother.

Kimberly Lange, Edgewood, for R.T.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Kevin H. Clefisch, County Attorney, and Stephen Saunders, Assistant
County Attorney, for appellee State.

David Baumgartner, Strawberry Point, and John Compton of John C.
Compton, P.C., Strawberry Point, for the minor child.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

S.A., her older sister, younger brother, and two younger step-siblings were adjudicated to be children in need of assistance under Iowa Code section 232.2(6)(b), (c)(2) (2005) in February and March 2005. The children were living with their mother, N.M., and R.T., the step-father of the three older children and the father of the younger two children, until February 4, 2005. On that day, R.T. was ordered to leave the residence because he reportedly physically abused his step-children. The children and their mother remained in the home. On July 5, 2005, the court entered a dispositional order that continued custody of the children with their mother under the protective supervision of the Iowa Department of Human Services (DHS). R.T. was allowed supervised visitation with the children.

The court entered an ex parte order for temporary removal of the children on October 20, 2005, on application from DHS. In anticipation of the children's removal, N.M. and R.T. had moved to Oregon with all five of the children three days earlier. DHS returned the children to Iowa, and the ex parte removal order was continued following a hearing on October 27, 2005. On December 1, 2005, after a modification hearing, the court determined that continued removal of the children from their home with N.M. was in the best interests of all five children. Custody was transferred to DHS, and the children continued to live in foster homes. On May 25, 2006, the court entered a review order that continued placement of the five children in foster care.

In September 2006, S.A. moved to a different foster home. These parents had known S.A. before the involvement of DHS in her family's life and arranged to be foster parents expressly to have S.A. in their home.

A permanency hearing took place on October 12, 2006, and the court ordered DHS to retain custody of the children for placement in foster care, subject to supervised visitation between the children and their parents. A case permanency plan was approved with planning for reunification, and the court enumerated several conditions that the mother was required to meet. On January 4, 2007, following a permanency review hearing, the court returned custody of the two youngest children to their parents, R.T. and N.M. The three oldest children, including S.A., remained in foster care because these children had suffered abuse resulting from their step-father's angry outbursts. The court found that S.A.'s relationship with her step-father, R.T., would have to be repaired before she could begin a trial home placement.

On April 5, 2007, the court returned the custody of the third child, M.M., to his mother, N.M. S.A. and her older sister T.A. remained in foster care. Neither sister had lived with their mother since October 2005.

Following an April 5 and 27, 2007 permanency review hearing, the court entered a permanency order finding that N.M. had not sufficiently met the conditions listed in the October 12, 2006 order to allow the court to determine that T.A. and S.A. safely could return home. The court ordered that custody of S.A. and her older sister remain with DHS in separate foster placements.¹ After

¹ The Iowa Court of Appeals upheld this decision. *In the Interest of T.A. and S.A.*, No. 07-0905 (Iowa Ct. App. Aug. 8, 2007).

another permanency review hearing, the court ordered on March 17, 2008, that the custody of S.A. remain with DHS for another planned permanent living arrangement in family foster care. The court found that the facts did not establish by a preponderance of the evidence that it would be in S.A.'s best interests to return to the home of her mother, step-father, and siblings.

On April 7, 2008, N.M. filed motions for reconsideration of permanency review/modification order and to reopen the hearing. A May 15, 2008 court order allowed the record to be reopened to allow the introduction of Dr. Maret's psychiatric evaluation of R.T. stating that R.T. had demonstrated substantial improvement in his ability to cope and manage his anger. However, the court still denied N.M.'s request to return S.A. to her home.

S.A. is eleven years old and is living in the foster home where she has resided since September 2006. She is thriving there and is doing very well in school. The child's foster mother passed away in July 2007, so S.A. now lives with only her foster father. S.A. is torn between wanting to return home and wanting to stay with her foster father. S.A. enjoys visitation with her mother, N.M., twice per month. Her guardian ad litem opposes reunification of S.A. with her mother and step-father.

N.M. appeals following the May 15, 2008 motion to reconsider permanency review order, arguing that the court erred by continuing the custody of S.A. with DHS instead of returning the child to her mother.

II. Standard of Review

"Our review of permanency orders is de novo. We review both the facts and the law and adjudicate rights anew on the issues properly presented. We

give weight to the juvenile court's findings, but are not bound by them." *In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005) (citations omitted).

III. Merits

Following the entry of a permanency order under Iowa Code section 232.104 (2007), S.A. shall not be returned to the custody of her mother, over a formal objection filed by child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning S.A. to her mother's custody would be in S.A.'s best interests. Iowa Code § 232.104(5). Our responsibility in modification of a permanency order is to look solely at the best interests of the child for whom that permanency order was previously entered. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). "Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs." *Id.*

We agree with the juvenile court that it is not in S.A.'s best interests to return to her mother and step-father's care. Her safety and emotional stability cannot be assured in their home. While it seems that N.M. has made substantial progress in counseling, the evidence presented casts doubt that R.T. has sufficiently resolved his anger issues. DHS workers that have extensive contact with the family have expressed serious concerns about the reunification of S.A. with R.T. Caseworkers are suspicious of the sincerity of R.T.'s efforts and statements. Dr. Maret found that "it was quite apparent to me from the beginning of the interview that [R.T.] was trying to present himself in as favorable a light as possible." Dr. Breitenstein, who evaluated R.T. in February 2007, stated that even after two years of treatment, "unfortunately it does not appear as if [R.T.] is

at a place with his wife's children where reunification is a viable option." Dr. Breitenstein found that this conclusion was corroborated by information from all sources except R.T. himself.

The experience of S.A.'s brother, M.M., during the first months of his return to his mother and step-father's home is concerning. A January 2008 report by Gilbert Alber, N.M.'s therapist, stated that R.T. has little interaction with his step-son, M.M., and makes no attempt to parent him. Kirsten Rabe, a counselor working with M.M., reported that M.M. "has almost completely shut down in our sessions" since returning to his mother's home. Rabe stated that she did "not believe that [M.M] would tell anyone if there were concerns going on in the family," citing possible monetary incentive to keep quiet. In contrast, S.A. has done exceptionally well in her foster home. She has excelled in school, and she is involved in extracurricular activities. She spends time with the extended family of her foster father, including one of her foster father's nieces to whom S.A. stated she felt she could talk about anything. S.A. has not had behavioral problems in her foster home, and she states that she is happy there. She is continuing a relationship with her mother and siblings. We find that it is in S.A.'s best interests to keep her in this environment where she is flourishing.

AFFIRMED.