

IN THE COURT OF APPEALS OF IOWA

No. 8-741 / 08-1219
Filed September 17, 2008

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

**S.M.S., Mother,
Appellant.**

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

The mother appeals a permanency order entered by the juvenile court.

AFFIRMED.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

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

Mary Kennedy, Waterloo, for father.

Kelly Smith, Waterloo, guardian ad litem for minor child.

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

SACKETT, C.J.

The mother of a child born in March of 2002 has filed a petition on appeal challenging a permanency order entered by the juvenile court that placed guardianship and custody of the child with her paternal grandmother and established visitation for the mother. She contends that the court should have adopted the recommendation of the Department of Human Services and the State that the child be returned to her care. The State, guardian ad litem, and the father have not appealed from this order. We affirm.

SCOPE OF REVIEW. Our review of permanency orders is 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 on the issues properly presented. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). 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); see *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995).

AUTHORITIES. The best interests of the children control the court's decision in granting a permanency order in a child in need of assistance matter. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). There is a rebuttable presumption that the children's best interests are served by parental custody. *Id.*

Iowa Code section 232.104(2) provides options for a court following a permanency hearing: (1) return the child to the child's home, (2) continue placement for an additional six months if it determines the need for removal will no longer exist at the end of the additional six months, (3) direct the county attorney or child's attorney to initiate termination proceedings, (4) transfer guardianship and custody of the child to a suitable person, (5) transfer sole

custody of the child from one parent to another parent, (6) transfer custody of the child to a suitable person for long-term care, (7) if there is a compelling reason the above would not be in the child's best interest, order another permanent living arrangement. See Iowa Code § 232.104(2) (2007). Section 232.104(3) provides:

Prior to entering a permanency order . . . convincing evidence must exist showing that all of the following apply:

- a. A termination of the parent child relationship would not be in the best interest of the child.
- b. Services were offered to the child's family to correct the situation which led to the child's removal
- c. The child cannot be returned to the child's home.

BACKGROUND. The child was removed from her mother's care and placed in the care of her paternal grandmother in December of 2005 as a result of the mother's use of illegal substances. In June of 2006 the child was returned to her mother's care. The child was again removed in November of 2006 and placed in foster care until August of the next year when she again was placed in her paternal grandmother's care.

The matter of the permanency order came before the juvenile court with the guardian ad litem's petition to terminate the parental rights of the child. At the hearing conducted on May 29 and 30, 2008, the Department of Human Services requested that the child be returned to her mother's care under their protective supervision. The mother was in agreement with this recommendation. The father did not contest the petition; rather he believed, as did the guardian ad litem, that the child would be best served by the termination of his rights and those of the child's mother so that the child could be adopted by the father's mother.

The parents have been offered services and the evidence at the hearing was that the mother was no longer using drugs, had a job with a satisfactory job review, and was adequately parenting an infant child she had with another father. In a remedial assessment of the mother from Families First Counseling Services in Waterloo, Iowa, dated January 11, 2008, the mother reported no current use of illegal drugs but reported she does infrequently use alcohol, taking one to two drinks on occasion. She also had been arrested in February of 2008, for conspiracy to distribute a controlled substance, a Class B felony. The matter had not yet been resolved. The juvenile court found the mother had sufficient parenting skills to meet the child's needs and the child had a strong bond with her mother. The court did not believe her to be currently abusing illegal substances but found she continued to associate with persons known to use them and she has a lengthy history of substance abuse beginning at age fifteen. The court denied the department's request to return the child to her mother recognizing, among other things, the pending charge that remained unresolved and the mother could be unavailable to the child in the near future. The court also noted that the child was concerned about her placement.

The court denied the guardian ad litem's petition finding that termination of parental rights was not in the child's best interests. The court recognized that the grandmother, who the evidence shows also has a strong bond with the child, testified to the importance of maintaining a relationship between the child and her

biological parents.¹ The court reasoned placing guardianship and custody with the grandmother of the child met the child's need for a secure and permanent placement and provided for a continual relationship with her biological parents while both parents can continue outpatient substance and mental health treatment.

RETURN TO MOTHER'S HOME. The mother's first three arguments basically contend that the juvenile court erred in finding the child could not return to her home at this time. She argues the court did not focus on the return of the child to her home at the time of the hearing but rather based its decision on a likelihood of unavailability due to unresolved criminal allegations. We find that the juvenile court considered this with other factors including the need of the mother for continuing substance out-patient treatment, her association with known substance abuse abusers, her earlier relapse, and the fear of different placements for the child who has twice been removed from her mother's care. Clear and convincing evidence supports the juvenile court's refusal to return the child to her mother's care and we affirm on this issue.

EVIDENTIARY OBJECTION. The mother also contends that testimony given by Adam Galbraith, a member of the Tri-County Drug Task Force in Waterloo, Iowa, regarding the pending charges against the mother was not relevant, was prejudicial, the prejudice far outweighed any probative value, and the evidence was cumulative, and violated the mother's constitutional right to defend herself. The mother contends error was preserved by raising a general

¹ The grandmother believed even if there were termination and she adopted the child that the child should continue to have a relationship with her parents. The grandmother and her husband were seeking approval for adoption but had not yet received it.

objection before Galbraith began testifying. The juvenile court indicated it found the testimony relevant to the availability of the mother to have the child in her care in the future. Specific objections were not raised again when the testimony came in with one or two exceptions. We agree with the mother that we make our own determination as to the admissibility of the evidence. *In re Marriage of Anderson*, 509 N.W.2d 138, 142 (Iowa Ct. App. 1993). We have not been furnished with authorities supporting her objections. Yet we believe, as did the juvenile court, the testimony related by the member of the drug task force that he believed the mother was involved in drug sales, but her first charge was the one that was pending, was admissible. We agree with the juvenile court that it was relevant. We find no reasons to reverse on this issue.

REASONABLE EFFORTS. The mother next contends that the guardian ad litem prevented the Department of Human Services from providing adequate services and making reasonable efforts to return the child home in that the guardian ad litem, when the mother's attorney made a request to allow a restriction on visitation to be removed from the court's order, denied the request. There is no basis to this argument. Only the court could remove a restriction from a prior court order. There is clear and convincing evidence that reasonable efforts were made to assist the child in returning home. We find no reason to reverse on this issue.

On our de novo review we find clear and convincing evidence supporting the juvenile court's decision.

AFFIRMED.