

IN THE COURT OF APPEALS OF IOWA

No. 9-1069 / 09-1545
Filed January 22, 2010

**IN THE INTEREST OF D.C.,
Minor Child,**

**D.N., Father,
Appellant.**

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

A father appeals from the juvenile court's dispositional order in a child in
need of assistance case. **AFFIRMED AS MODIFIED.**

Jami J. Hagemeyer of Williams, Blackburn, & Maharry, P.L.C., Des
Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Bryan Tingle, County Attorney, and Tiffany Kragnes and Tracy Sehnert,
Assistant County Attorneys, for appellee.

Kathleen Sandre, West Des Moines, for mother.

Paul White, Des Moines, attorney and guardian ad litem for minor child.

Jason Hauser, Des Moines, for intervenors.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, P.J.

A father appeals from the juvenile court's dispositional order in a child in need of assistance case. He contends custody of the child should be transferred to his care. We review his claim de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999).

The child, born in July 2008, was voluntarily removed from the mother's care in January 2009 after concerns about the mother's self-harming behaviors and her frustrations with parenting. The child was placed in the care of the maternal grandparents and was adjudicated in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2009). In February of 2009, the father's name was provided to the Department of Human Services and he was made aware of the juvenile court proceedings. On April 8, 2009, the father filed a motion seeking custody of the child. The mother and father's relationship ended before the child was born and the father had not previously had any contact with the child. The parents were never married.

In June 2009, the court held a hearing on the maternal grandparents' motion to intervene in the proceedings. It also took evidence regarding the father's motion to have the child placed in his care. At the close of the hearing, the court ordered the child remain in the maternal grandparents' care until the dispositional hearing, which was held in September 2009. After the disposition hearing, the court ordered the child to remain in the care of the maternal grandparents. The father appeals.

Iowa Code section 232.102(1)(a) provides, “[a]fter a dispositional hearing the court may enter an order transferring the legal custody of the child to . . . [a] parent who does not have physical care of the child, other relative, or suitable person.” A modification of custody or placement under the juvenile code requires a material and substantial change in circumstances. *In re J.F.*, 386 N.W.2d 149, 152 (Iowa Ct. App. 1986). The determining factor is the child’s best interest. *Zvorak v. Beireis*, 519 N.W.2d 87, 89 (Iowa 1994). There is a strong presumption that parental custody best serves a child’s welfare. *Id.*; *In re S.V.*, 395 N.W.2d 666, 669 (Iowa Ct. App. 1986) (“The best interests of the child are presumed served by placement with a natural parent whenever possible.”).

We conclude there has been a material and substantial change in circumstances since placement of the child with the maternal grandparents. At the outset of this case, the father did not have contact with the child—at least partly due to the mother and maternal grandparents’ interference. However, since being notified of the juvenile court proceedings, the father has established a bond with the child and complied with the recommendations made to him, including improvements to the home and quitting smoking. The father has shown he is a responsible caretaker for the child.

We conclude the best interest of the child is served by placing the child in the father’s care. None of the service providers had any concerns about the father’s ability to care for the child and the State recommended the child be placed in the father’s care. Although the father shares a home with his parents and sister, the home is adequate. At the time of the dispositional hearing, the

father already had visits with the child every Monday and Tuesday, as well as every other weekend. There is no evidence to support the maternal grandparents' concern regarding the child's exposure to cigarette smoking or pets in the father's home. Nor is there evidence the father takes the child to daycare during his visitation or that he has an anger problem.

We affirm the adjudication as a child in need of assistance and modify custody to place the child in the father's care.

AFFIRMED AS MODIFIED.