

IN THE COURT OF APPEALS OF IOWA

No. 9-619 / 09-0949
Filed August 19, 2009

**IN THE INTEREST OF K.Y., S.H., and J.Y.,
Minor Children,**

**A.M.Y., Mother,
Appellant.**

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop,
Associate Juvenile Judge.

A mother appeals the juvenile court's dispositional order placing one child with the child's father and two children with the children's maternal aunt pursuant to Iowa Code section 232.102(1)(a) (2009). **AFFIRMED.**

John J. Haney of Hinshaw, Danielson, Kloberdanz & Haney, P.C.,
Marshalltown, for appellant mother.

Reyne L. See of Johnson, Sudenga, Latham, Peglow, & O'Hare, P.L.C.,
Marshalltown, for father of K.Y.

Bethanie Currie, Marshalltown for father of S.H. and J.Y.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jennifer Miller, County Attorney, and Joshua VanderPloeg, Assistant
County Attorney, for appellee State.

Melissa Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, attorney for
minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

Ashley appeals the juvenile court's dispositional order placing her child K.Y. (born 2003) with the child's noncustodial father and her children S.H. (born 2004) and J.Y. (born 2006) with their maternal aunt pursuant to Iowa Code section 232.102(1)(a) (2009). On appeal, she asserts the juvenile court erred in separating the three children. We affirm.

The Iowa Department of Human Services (DHS) became involved with Ashley and her children in November 2006 after an altercation at the home between Ashley and the father of S.H. and J.Y.¹ DHS was again involved with Ashley in July 2008 after reported physical abuse of K.Y. K.Y. had a bruise on her leg, which Ashley admitted causing. DHS confirmed the finding of physical abuse.

In April 2009, Ashley's children were removed from her care after Ashley and S.H. tested positive for methamphetamine.² The children were adjudicated children in need of assistance on April 30, 2009 pursuant to Iowa Code section 232.96. Upon removal, all three of Ashley's children were placed in the care of her twin sister, Miranda. Miranda is the single mother of two children and, like Ashley, lives in Marshalltown. Miranda has regular employment in Marshalltown.

¹ Their father is currently in a residential correctional facility in Marshalltown, Iowa, after serving time for the charges resulting from this altercation. He does not challenge the placement of S.H. and J.Y. with their aunt.

² DHS reported in July 2008 that the children had previously been removed from the home while Ashley was in drug treatment, though the report does not specify when this occurred.

The dispositional hearing took place on June 2, 2009. At the hearing, DHS recommended that S.H. and J.Y. should remain with their aunt but that K.Y. should be placed with her father, Eric.

Eric lives in Fort Dodge with his fiancée and their daughter in a two-bedroom home. Eric is currently unemployed, but stays at home with his daughter. Eric is pursuing a community college degree. He has no prior history of drug use or domestic abuse. Eric has had minimal contact with K.Y. during K.Y.'s life. Eric reports he attempted to arrange visits with K.Y. but Ashley generally prevented him from doing so. At the start of this case, it had been approximately six months since Eric had seen K.Y. Since then, Eric has visited with K.Y. on two occasions. K.Y. wants to spend time with her father, and Eric wants to have custody of K.Y. Eric's house is a two-bedroom house, although DHS had not visited the house at the time of the hearing. Except when she was very young, K.Y. has never stayed overnight with Eric. Eric has a vehicle and a current driver's license.

The DHS case manager did not dispute that Miranda has an appropriate home for all three children. However, she took the position that a child should be with a parent where possible. Also, it was noted that Miranda already has two young children of her own, and there was reference to the potential stress of having five young children in the house.

No witness disputed that the three children have a strong bond with each other, having lived together all their lives. At the same time, no witness disputed there is a bond between Eric and K.Y. Both Eric and Miranda agreed to facilitate visitation for the benefit of the three siblings in the event they were split up.

In its June 11, 2009 dispositional order, the juvenile court ordered that temporary custody of S.H. and J.Y. be transferred to Miranda and temporary custody of K.Y. be transferred to Eric. The court provided a minimum schedule for K.Y.'s transition into her father's home, starting with visitation every other weekend and progressing to a full week of visitation during July. The court ordered full custody to begin no later than one week before the start of the 2009-2010 school year.

Ashley, who did not appear in person at the dispositional hearing, appeals. She does not challenge either the child-in-need-of-assistance findings or the disposition of S.H. and J.Y. She does not argue that the children should remain with her at this time. She claims only that the juvenile court erred in separating the three children and placing K.Y. with her father rather than her aunt.

We review this matter de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Upon our de novo review, we agree with the juvenile court's decision. The juvenile court must make the least restrictive disposition that is appropriate considering all the circumstances of the case. Iowa Code § 232.99(4). Placement with a noncustodial parent is less restrictive than with a relative or other suitable person. *See id.* § 232.102(1)(a) (providing legal custody of a child may be transferred to a parent who does not have physical care, other relative, or other suitable person); *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) (stating Iowa Code chapter 232 favors relative placements over non-relative placements). Although Eric has only a very limited track record of taking care of K.Y., the evidence presented at the dispositional hearing indicated there is definitely a bond between Eric and K.Y., and Eric is already caring for another daughter.

From the evidence presented at the hearing, placement of K.Y. with Eric is appropriate.

It is true that courts prefer to keep siblings together unless there are good and compelling reasons to separate them. *In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988). Yet here we believe this principle must yield to the legal preference in favor of the natural parent.

Our ultimate concern is with the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006). In determining K.Y.'s best interests, we must take into account the "strong societal interest in preserving the natural parent-child relationship." *Northland v. Starr*, 581 N.W.2d 210, 212 (Iowa Ct. App. 1998). We find maintaining the natural parent-child relationship justifies the dispositional order in this case. Eric and Miranda have agreed to facilitate weekly contact by phone and weekend visitations for the children.

Accordingly, we affirm the decision of the juvenile court.

AFFIRMED.