

IN THE COURT OF APPEALS OF IOWA

No. 9-955 / 09-1537
Filed December 17, 2009

**IN THE INTEREST OF M.R. and A.R.,
Minor Children,**

**I.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A mother appeals a juvenile court permanency order establishing
guardianship and custody of her children with their childcare provider.

AFFIRMED.

Sarah Wenke, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Mark Tremmel, County Attorney, and Allen Cook, Assistant County
Attorney, for appellee State.

Kenneth Duker of Breckenridge & Duker, P.C., Ottumwa, for minor
children.

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

DANILSON, J.

The mother appeals a juvenile court permanency order establishing guardianship and custody of her eleven-year-old son, M.R., and her twelve-year-old daughter, A.R., with their childcare provider. We affirm.

I. Background Facts and Proceedings.

Sometime after the children's father died,¹ the mother entered into a relationship with S.S. According to a prior founded Iowa Department of Human Services (DHS) investigation, S.S. had sexually abused his daughter. He also had a lengthy criminal history, which included time in prison for armed robbery. S.S. moved in with the mother and the children in 2007, and began to physically abuse M.R., which included hitting M.R., twisting M.R.'s ears until they burned, placing a pillow over M.R.'s face to inhibit his breathing, and smacking M.R. around. He also emotionally abused M.R. by making fun of him and teasing him when he wet the bed. S.S. smoked marijuana in front of the children, and once forced M.R. to drink beer. When M.R. told the mother about the abuse, she responded that she would speak to S.S. about it.

The abuse continued, and DHS was alerted to one of M.R.'s injuries in early September 2007. The mother agreed to the children's placement with their childcare provider, T.M., to give S.S. time to move out of her home. Several months passed, but S.S. had still not moved out of the mother's home. In December 2007, the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) and (c)(2). The adjudication

¹ The father was serving time in prison prior to the time of his death, but was released for medical reasons and died in the hospital.

was based on the mother's failure to provide adequate care and supervision for the children due to the risk for physical harm to the children while in the mother's home.

Although at times the mother and S.S. each individually reported to service providers that they were discontinuing their relationship, S.S. continued to be at the mother's home. Even when the mother reported that S.S. had moved out, service providers spotted his car near her apartment. Furthermore, S.S. attended therapy and counseling sessions with the mother after service providers advised that she should attend the sessions alone. Although the mother contended S.S. no longer lived with her, she failed to report S.S.'s visits to her apartment to DHS. The mother claimed that S.S. had moved out of her apartment and into a place of his own across the street, but the record does not fully support her claim.

The mother's visits with the children did not progress. The mother failed to take full advantage of visitation. She was having visits with the children for several hours on two to three different mornings a week, but in December 2008, visits were changed to supervised only, due to DHS concern that the mother was instructing the children not to share information about S.S. with DHS. Subsequently, the mother did not ask for increased visitation.

Service providers also learned the mother was having conversations with the children about the juvenile case that were best left to the adults in the case, and that she was inappropriately bribing the children. The mother continued to display anger and resentment toward service providers, and to blame others for the removal of her children. Further, S.S. called a service provider and left a

message stating that it was illegal for DHS to keep the mother's children from her, essentially supporting the mother's resentment toward DHS.

The mother asked the children how they would feel when they moved back home and S.S. was there. The record indicates that mother lacked an understanding that her relationship with S.S. adversely affected the children. At the time of the permanency hearing, the children remained frightened to return home if S.S. was there. M.R. reported he was certain that even if the mother kicked S.S. out of the apartment, she would allow him back. The children expressed that they do not feel safe around S.S. and do not feel the mother can protect them from him. The children's care provider, T.M., stated she has seen S.S. driving around her house on several occasions.

Following DHS's reasonable efforts to reunify the children with the mother, the permanency hearing was held in August 2009. The court determined that reunification with the mother was not feasible or safely possible. The court noted that the children continued to do well in the care of T.M., and were participating in medical and mental health services. The court acknowledged that three different service providers expressed concerns about the children returning to the mother's home. DHS recommended, and the guardian ad litem agreed, that the permanency order be modified so that a guardianship order could be entered.

In making its decision, the court stated:

The Court entered order in February 2009 pursuant to Iowa Code section 232.104(2)(b), and provided [the mother] with up to six additional months for the children to be returned. That time has expired, and the evidence is both clear and convincing the children cannot now return to the custody of their mother. There continue to be concerns about mother's relationship with [S.S.], and [the mother's] ambivalence in expanding visits with the children. In

addition, the in-home provider, the social case manager, the remedial worker, and the guardian ad litem all concur the children cannot now return to mother's home. [M.R.] is still working on issues related to his past abuse, and his on-going fear of [S.S.], and [A.M.] continues to have difficulty expressing her feelings about her mother.

The court therefore determined it was in the best interests of both children that they be placed in the guardianship and custody of their childcare provider, T.M.

The mother appeals.

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 children's best interests. *Id.*

III. Merits.

The mother argues the juvenile court erred in placing the children in a guardianship with their childcare provider. She contends clear and convincing evidence does not support the establishment of a guardianship, and requests that the children be placed in her custody.

The juvenile court determined that reunification with the mother is not possible. While the record shows that the mother loves the children and the children are bonded to her, our primary concern is the children's best interests. Although the mother has made some recent improvements, we are unable to find that the children could likely be returned to the mother's home without further harm. The children have been through several years of turmoil and uncertainty.

The children need and deserve stability and consistency, which they cannot find with their mother, and it is unlikely they will be able to find it with her in the immediate future.

Using the mother's past performance as a predictor of future performance, there is convincing evidence that she is unable to provide a safe and nurturing environment for the children. See *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995) ("A parent's past performance may be indicative of the quality of future care the parent is capable of providing."). The mother has a long history of dangerous and unhealthy relationships with men, and she exposes her children to these relationships. She has been married twice before, and both men threatened her with violence: the first using a gun, the second using a knife. For the past several years she has been involved with S.S., who has a lengthy criminal record (including violent crimes), a history of substance abuse, and a founded sexual abuse report against his daughter. Most importantly, S.S. has been physically and emotionally abusive toward M.R. The mother has not shown that she understands the significance of the children's fear and lack of safety around S.S. Instead, she has tried to hide her relationship with S.S., attempted to bribe the children to come back home, and blamed DHS for her inability to receive placement of the children. The children continue to be scared of S.S. and feel that the mother cannot and will not protect them from him.

DHS has made reasonable efforts, including parent skill services, individual and family therapy, supervised visitation, and other services listed in the case plans to prevent removal of the children from the home, and to make it possible for the children to be returned. The services have not resulted in

significant improvement. The children need permanency. As has been noted often in the past, “[p]atience with parents can soon translate into intolerable hardship for their children.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). It is not in the children’s best interests to have the permanency order reversed. The juvenile court did not err in establishing guardianship of the children with T.M.

AFFIRMED.