

IN THE COURT OF APPEALS OF IOWA

No. 4-178 / 93-1441

FILED

MAY 26 1994

CLERK SUPREME COURT

IN THE INTEREST OF M.G. and H.G., Minor Children,
D.G., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine
County, James A. Weaver, District Associate Judge.

D.G., the mother, appeals an order continuing her two
minor children, M.G. and H.G., in foster care and directing
the State to file a termination of parental rights
petition. **AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED.**

Susan A. Choate of Muscatine Legal Services, Muscatine,
for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; and Kathrine S.
Miller-Todd, Assistant Attorney General, for
appellee-State.

Jeffrey M. Johnson, Muscatine, guardian ad litem, for
minor children.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

DONIELSON, C.J.

Deanne is the mother of Melissa, born December 27, 1990, and Hannah, born December 20, 1991. In September 1992 the mother stipulated the children were CINA pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The children had been physically abused by the mother's paramour and the mother had failed or was unable to protect the children from him or the hazards in the home. The children were continued in foster care (having entered such care in July 1992).

At a disposition hearing in May 1993, service providers testified the mother's follow through with services was poor and she could still not be trusted to pick "safe" boyfriends or care for the children. DHS recommended the children be placed immediately with their maternal grandmother. At that time the court refused to issue a permanency order until the mother was given twelve months opportunity to work on reunification.

In July 1993, the mother filed a motion for modification of placement claiming the foster mother was interfering with reunification efforts. The district court ruled there was insufficient evidence to support the mother's contentions.

In August and September 1993, a permanency hearing was held. Service providers indicated although the mother had participated in parenting classes, she could not care for her children. The mother was pregnant and had been charged

again for assaulting a minor while still on probation for a prior charge. She had failed to utilize certain services, such as counseling and domestic violence services.

DHS recommended placement with the maternal grandmother, acknowledging that the grandmother wanted to adopt the children and such action would create stability. The district court found the mother was unable to acquire and implement parenting skills so the children could not be returned to her. The court also refused placement with the grandmother because of the potential conflicts she would encounter with the mother over care of the children. The district court believed termination of parental rights would be in the children's best interests and ordered the State to file a petition to terminate Deanne's rights to Melissa and Hannah.

We review decisions in permanency hearings de novo. In re A.D., 489 N.W.2d 50, 52 (Iowa App. 1992). We give weight to the district court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7). Our paramount concern is the best interest of the children. In re D.R.R., 498 N.W.2d 920, 922 (Iowa App. 1993).

In our de novo review of the record we find convincing evidence the three factors in section 232.104(3) apply. The record reveals various service providers have offered Deanne help to correct her problems and improve her parenting skills. We find DHS has made every reasonable effort to return Melissa and Hannah to their home, yet the

children cannot safely be returned to Deanne's care at this time. Even though Deanne has not demonstrated the ability to parent Melissa and Hannah adequately, we find terminating her parental rights to the girls would not be in their best interest.

DHS proposed transferring guardianship and custody of the girls to their maternal grandmother. After our review of the favorable home study done on the grandmother's home and the recommendations of the department, we determine such a transfer would be appropriate. We recognize the concern of the district court for the potential conflict between Deanne and her mother. Our review of the record, however, brings us to the conclusion the benefits to Melissa and Hannah of living in the same home as their older brother and remaining in their family outweigh the potential for conflict. We find it would be in their best interest to transfer the guardianship and custody of Melissa and Hannah to their maternal grandmother. See Iowa Code §§ 232.102(1)(a) and 232.104(2)(d)(1). We remand to the district court for entry of the appropriate order.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.