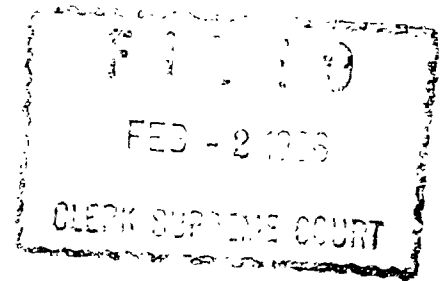


IN THE COURT OF APPEAL OF IOWA

No. 5-736 / 95-1049



IN RE R.M., A Child.

W.M.,

Appellant.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn,
Judge.

Appeal from dispositional order in child-in-need-of-assistance proceeding.

REVERSED.

R. T. Starken of Alexander & Starken, Ottumwa, for appellant.

Thomas J. Miller, Attorney General; Judy Sheirbon and Charles K. Phillips,
Assistant Attorneys General; and Victoria Siegel, County Attorney, for appellee.

Sam K. Ehrhardt, Ottumwa, guardian ad litem for minor child.

Heard by Sackett, P.J., Huitink, J., and Perkins, S.J.*

*Senior Judge from the Fifth Judicial District serving on this court by order of the
Iowa Supreme Court.

PERKINS, S.J.

A father appeals from the juvenile court's dispositional order. The father contends the least restrictive disposition for his son would have been to place him in the care of his paternal grandmother rather than in foster care. We agree and reverse the dispositional order of the juvenile court.

Deanna and Walter are the parents of Rory, born January 23, 1991. Rory was adjudicated a child in need of assistance with respect to his mother on February 3, 1995. Due to the inability of either parent to care for the child, the court placed Rory in the temporary care of his maternal aunt. A child in need of assistance petition was later filed with respect to the father. A hearing on that petition and the issue of the placement of Rory was held on March 10, 1995. Rory was adjudicated a child in need of assistance with respect to his father on March 14, 1995.

In determining where to place Rory, the court considered keeping him in the care of his maternal aunt or placing him in the care of his paternal grandmother. The court chose to continue Rory's placement with his maternal aunt. In declining to place the **child** in the care of his paternal grandmother, the court found --

The Court respects [paternal grandmother's] interest in being caretaker of the child and acknowledges her apparent appropriate care of him upon visitations and her concern for her attending to his educational and emotional needs. The Court finds, however, that from the record of past family history and the possible presence in the home of [the child's father], concerns arise about the prospects of appropriate future care of the child in [the paternal grandmother's] home.

However, the court ordered the paternal grandmother be allowed visits with Rory subject to the discretion of the Iowa Department of Human Services (DHS).

The maternal aunt subsequently sought relief from the placement and another dispositional hearing was held to determine the least restrictive placement for Rory. Once again the paternal grandmother sought to have Rory placed in her care. The court declined to place Rory in the care of his grandmother and ordered he be placed in foster care. The father now appeals from that dispositional order and alleges the court erred in not placing Rory in the care of the grandmother.

Following the adjudication of a child as a child in need of assistance, a juvenile court is required to “make the least restrictive disposition appropriate considering all the circumstances of the case.” Iowa Code § 232.99(3) (1995). It is statutorily provided placement with a relative is the least restrictive disposition for a child in need of assistance. Iowa Code §§ 232.99(3), .102(1)(a) (1995). Our review of a dispositional hearing held after a child has been adjudicated in need of assistance is de novo. *In re S.R.A.*, 440 N.W.2d 619, 620 (Iowa App. 1989); Iowa R. App. P. 4. We give ~~weight~~ **weight** to the fact findings of the juvenile court, but we are not bound by them. *S.R.A.*, 440 N.W.2d at 620.

The first and governing concern is the best interests of the child. *In re S.V.*, 395 N.W.2d 666, 669 (Iowa App. 1986). We consider the fact that a child needs a stable and continuing environment. *Id.* The record in this case reveals that during

the first four years of his life Rory lived at thirty-one different locations. His parents have criminal and substance abuse problems which prevent them from being able to care for him. Rory is in need of a loving and stable home in which he can overcome his behavioral problems.

Rory's grandmother loves him and provides adequate care when he is with her. She has had regular contact with the child over the years, and a court ordered home study characterized the grandmother as a "stable force" in Rory's life. During the March 10 hearing, the social worker assigned to this case testified the grandmother has the capability of being a good caretaker for Rory. The grandmother does not work outside of the home and would be available to care for Rory on a full-time basis.

It is not disputed Walter had a delinquent childhood and has not shown significant improvement as an adult. However, there is nothing in the record to indicate the paternal grandmother was not an appropriate caretaker when she raised Walter. Walter's shortcomings do not exclude the grandmother from consideration as a caretaker for Rory. The grandmother indicated her willingness to cooperate with DHS recommendations regarding Walter's presence in her home if Rory were placed in her care.

Placement with a relative is statutorily recognized as the least restrictive disposition for a child in need of assistance whose custody is to be transferred away

from a custodial parent. While circumstances can arise rendering placement with a relative inappropriate, such a placement is generally preferable to placement in foster care. The paternal grandmother was available and willing to care for Rory. She had the ability to provide adequate care for him. We reverse the dispositional order of the juvenile court and direct that Rory be placed in his paternal grandmother's care subject to DHS supervision.

REVERSED.