

IN THE COURT OF APPEALS OF IOWA

FILED

APR 30 1985

CLERK SUPREME COURT
528

IN THE INTEREST OF J.W.,

)

A Child.

)

Filed April 30, 1985

B.C., Grandmother,

)

5-74

84-1246

Appellant.

)

Appeal from the Iowa District Court for Decatur County - Van Wifvat,
Judge.

The juvenile court had previously adjudicated the child to be a child in need of assistance and had placed her with her maternal grandmother. However, in a later dispositional review hearing, the court transferred the child to the home of her natural father and the grandmother has appealed. AFFIRMED.

Amy Beattie of Skinner, Beattie & Wilson, P.C., Altoona, for the appellant
(maternal grandmother).

Monty W. Franklin, Corydon, for the appellee (father).

Considered by Donielson, P.J., and Snell and Sackett, JJ.

SNELL, J.

The child, J.W., age 9, was abandoned by her mother at a church in Kansas City in the spring of 1983. Authorities ordered that the child be placed in the custody of her grandmother, B.C. J.W.'s parents were divorced shortly before she was born. Her father, L.W., has since remarried and has three children by this marriage. The evidence indicated that he did not have much contact with J.W. during her first eight years and that he did not pay support regularly. L.W. responds that he attempted to visit J.W., but that her mother kept moving around and he could not contact her. As to his failure to pay child support, he responds that he was unemployed part of the time and that he felt he should not have to pay child support if he could not visit the child.

On October 21, 1983, the Decatur County Attorney filed a child-in-need-of-assistance petition alleging that the child had been abandoned by her mother and father. A motion to transfer to Polk County was filed by the child's mother and a hearing was held on November 29, 1983. The motion was denied and the court issued an order that J.W. remain in the temporary custody of the grandmother, B.C. Visitation rights were set for the father, L.W.

An adjudicatory hearing was held on April 19, 1984. Prior to the hearing, the parties stipulated J.W. was a child in need of assistance. On that day, Judge Wifvat ordered that: (1) J.W. was a child in need of assistance, as the parties had stipulated; (2) legal and physical custody was to continue with her grandmother, B.C., with visitation to the father continuing; (3) the child was to receive counseling at the Des Moines Child Guidance Center and that the Center was to submit a report on J.W. after the fourth meeting; (4) L.W. may seek family counseling in Decatur when J.W. is visiting his family and B.C. may seek a second opinion from a competent psychiatrist as to J.W.'s diagnosis. Finally, the order stated that a "disposition review hearing" was scheduled for August 16, 1984.

The hearing was held on August 16. At that time Susan Stearns, the Juvenile

Court Officer for Woodbury County, presented her report to the court. Stearns stated that while she did not fault the grandmother's care of J.W., she felt that because a parent was available who was capable of providing a good home, custody should be transferred to the father. Mary Lee, a child protective treatment worker for the Iowa Department of Social Services, stated that custody should remain with the grandmother because that atmosphere provided more stability.

The record indicates that J.W. has been a difficult child to discipline and that she has had emotional problems. Reports introduced at trial described her as "quite regressive and child like in her behavior" and "manipulative and has learned to play parent against grandparent and grandparent against grandparent." There is evidence that there have been problems in the past when J.W. has visited her father; however, Stearns' report and the testimony of the father indicate that J.W. now seems better adjusted during these visits.

The grandmother has appealed from that ruling. She contends the transfer of custody was not in the child's best interests and was not justified by any change in conditions since the earlier disposition order placing the child with her. She also contends the transfer of custody was not within the juvenile court's statutory power; she alleges that Iowa Code section 232.102(6) permits only three outcomes of a dispositional review hearing: a return to the child's "home," a continuation of the existing placement, or the initiation of a proceeding to terminate the parent-child relationship.

We reject the argument that the trial court lacked the statutory authority to transfer custody of the child to the father during this proceeding. The grandmother argues that the trial court's action in August was a review of a dispositional hearing under Iowa Code section 232.102(6), which authorizes the court to grant three alternative forms of relief: the child is returned home; an extension of the placement; or a termination of the parent-child relationship.

Once a petition is filed in a child in need of assistance proceeding pursuant

to Iowa Code section 232.87, an adjudicatory hearing is held under Iowa Code section 232.96. Under Iowa Code section 232.97, the court may not make any disposition on the petition until a social report has been submitted to and considered by the court. Under 239.96, the court is authorized to hear the cases involving a child in need of assistance claim and if the court finds the petition established, it will enter an order adjudicating the child in need of assistance. Iowa Code § 239.96(9). Following entry of an order pursuant to 239.96(a), the court must hold a dispositional hearing to determine what disposition must be made. Iowa Code § 239.99(1). The dispositions which may be made are: suspended judgment under section 323.100; retention of custody by parent under Iowa Code section 232.101; or transfer of legal custody of juvenile and placement under Iowa Code section 232.102. Iowa Code § 232.99(3) (1983).

The grandmother claims that the hearing on April 19, 1984, was the dispositional hearing authorized by Iowa Code section 232.99 and that the court made a temporary placement under section 232.102. Section 232.102(6) requires that the court is to review any placement under this section after six months and at that time the court may place the child according to one of the three alternatives set forth in section 232.102(6). Adherence to these three alternatives has been strict in a 232.102(6) review procedure. See, In Interest of Blackledge, 304 N.W.2d 209, 213 (Iowa 1981) ("Under this provision, the court had three alternatives after the review hearing A new transfer of legal custody is not among the alternatives.") The grandmother claims that the hearing in August was a review of the April disposition hearing pursuant to Iowa Code section 239.102(6) and that the transfer of custody to the father was not one of the authorized alternatives.

Because we find that the August hearing constituted the disposition hearing required under 232.99 and not a review of a disposition hearing under 232.102, we find that the trial court did have authority to award custody to the father.

At the time of the April hearing, there was no social report presented to the court as required by section 232.97. The nature of the proceedings, as demonstrated by the record, indicate that this was a hearing concerning temporary removal under Iowa Code section 232.95. Further support for the finding that the April proceeding was not a disposition hearing is the fact that the August hearing was four months later rather than the six months required for a review of a disposition hearing.

We conclude, therefore, that the disposition hearing was held in August and under 232.101, the court was authorized to award custody to the father.

Additionally, we agree with the trial court's finding that custody should be awarded to the father. Our review is de novo. In re Interest of Blackledge, 304 N.W.2d 209, 210 (Iowa 1981). In determining custody matters, the best interest of the child is of paramount concern. In re Marriage of Corbin, 320 N.W.2d 539, 543 (Iowa 1982). In deciding issues of child custody, there is a presumption of parental preference. Iowa Code § 633.559. Hulbert v. Hines, 178 N.W.2d 354, 361 (Iowa 1970). In this case, we agree with the trial court finding that the best interest of the child would be served by granting custody to the father.

The findings of the trial court are affirmed.

AFFIRMED.

Donielson, P.J., concurs and Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I agree with the majority but would hold that a return to one's father is in fact a return of the child home as contemplated under §232.102(6).