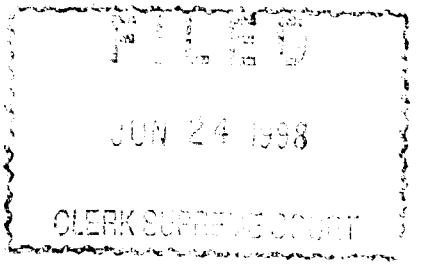
IN THE COURT OF APPEALS OF IOWA

No. 8-150 / 97-0641
Filed June 24, 1998



IN THE INTEREST OF P.O., a/k/a P.B., Minor Child,

N.O., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

A mother appeals from the dispositional order of the juvenile court returning her son to the custody of his father in the state of Washington. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Richard Kallsen, Sioux City, for appellee father.

Thomas J. Miller, Attorney General, and Chris Odell, Assistant Attorney General, for appellee State.

Marchelle Roberts, Sioux City, for minor child.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

STREIT, J.

A mother appeals from the dispositional order of the juvenile court returning her son to the custody of his father in the state of Washington. She claims the child should be returned to Sioux City until there has been an opportunity for further investigation and services. We affirm.

Nancy and John are the parents of Preston, born March 25, 1986. They never married but an order establishing paternity was entered in the state of Washington in 1987, granting Nancy custody of Preston and John visitation. Nancy moved to Arizona and denied John visitation with Preston. An Arizona court found Nancy in contempt and ordered her to allow John to visit Preston. Nancy did not comply and fled Arizona with Preston. In Nancy's absence, in July 1993, the Arizona court modified custody to grant John full custody of the child and supervised visitation for Nancy to prevent further abductions.

Nancy and Preston were found in Texas and Preston was returned to John in Washington. In October 1993, Nancy attempted to abduct Preston from Washington and secrete him in Iowa. The police apprehended Nancy in Sioux City and returned Preston to Washington.

In August 1996, John allowed Preston to go to Iowa to visit Nancy. This was the first time Nancy had seen Preston since October 1993. During Preston's visit, Nancy became concerned about his behavior and obtained an emergency removal order and an adjudication Preston was a child in need of assistance (CINA). Preston

said his father often got angry and would be mean to him. A psychiatrist thought Preston was suffering from severe depression and post traumatic stress syndrome, but was unable to determine the cause. In September 1996, Preston was placed in foster care to avoid undue influence and coaching by Nancy.

In April 1997, the juvenile court concluded the psychological harm suffered by Preston which led to the initial CINA adjudication had been addressed and alleviated. The court found the record was devoid of any services that were provided to Preston and his father to avoid Preston's removal. The court ordered Preston be returned to the custody of his father subject to the provision of the Department of Human Services protective supervision through the Washington Department of Human Services or Child Protection Services. The court ordered Preston to participate in individual therapy, that reunification services be provided, and John attend a "refresher" course on parenting skills development.

On appeal, Nancy claims the court erred in ordering Preston's return to his father. She asks that Preston be returned to Sioux City until there has been an opportunity for further investigation and services for Preston.

Review of CINA proceedings is de novo. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa App. 1997). The ultimate goal of CINA proceedings is for the child to receive "the care, guidance and control that will best serve the child's welfare." Iowa Code § 232.1; *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995). The relationship between Nancy and John concerning Preston has been tumultuous. Nancy has

hindered Preston's relationship with his father. Her improper actions led to a change in Preston's custody from her to John.

Iowa Code section 232.102(5) expresses the legislature's preference for parental custody. Nancy argues Preston should not be returned until John has received services and more investigation is completed. The psychiatric evaluation and home study do not demonstrate John's need for services. All previous contacts between the Washington Department of Human Services and John have been closed. John is amenable to receiving services and desires to improve his parenting skills. The exceptions to the preference for parental custody in section 232.102(5) (danger of physical abuse or danger sufficient to have a CINA adjudication) have not been demonstrated by clear and convincing evidence.[1] Because John lives in Washington and Preston was temporarily in Iowa, it was not feasible for the Iowa Department of Human Services to make "reasonable efforts to prevent or eliminate the need for removal." *See* Iowa Code § 232.102(5) and (9). However, the juvenile court's order

---

[1] Iowa Code section 232.102(5) states, in pertinent part:

> 5. Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred *unless* the court finds there is clear and convincing evidence that:
>
> a. The child cannot be protected from physical abuse without transfer of custody; or
>
> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

(Emphasis added).

makes provision for the involvement of the Washington Department of Human Services to assure Preston's best interests.

Nancy also asserts the juvenile court should have given more weight to Preston's expressed preference not to live with his father. "When a child is of sufficient age, intelligence, and discretion to exercise an enlightened judgment, his or her wishes, though not controlling, may be considered by the court, with other relevant factors, in determining child custody rights." *In re Marriage of Pundt*, 547 N.W.2d 243, 245 (Iowa App. 1996) (citing *In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa App.1991)). Preston was removed from his mother's care during the pendency of the CINA proceedings to stop her manipulations. Preston's statements concerning living with his father vary over the proceedings. Preston was only ten to eleven years old during the proceedings. Both parties cite *State ex rel. Bruner v. Sanders*, 129 N.W.2d 602 (1964), concerning a child's preferences. The children in that case were ages fourteen, twelve, and five. The court considered their expressed preferences but also recognized the overriding importance of acting in the child's best interests. "When we speak of what is best for the child, we do not mean that which the child wants." *State ex rel. Bruner v. Sanders*, 129 N.W.2d at 606 (quoting *Wooley v. Schoop*, 234 Iowa 657, 668, 12 N.W.2d 597, 602 (1944)). The juvenile court gave appropriate weight to Preston's statements in ordering him returned to John's care and custody with services.

For the reasons set forth above, we affirm the decision of the juvenile court to return Preston to his father's care in Washington.

AFFIRMED.