

IN THE COURT OF APPEALS OF IOWA

No. 2-189 / 91-1433

FILED

JUN 25 1992

CLERK SUPREME COURT

IN THE INTEREST OF B.T. AND J.T., Minor Children

M.S., Mother,

Appellant.

916

Appeal from the Iowa District Court for Polk County,
Anthony Critelli, Judge.

The mother, the noncustodial parent, appeals from a
dispositional review order returning the children to the
father, the custodial parent. **AFFIRMED.**

Jerry R. Foxhoven, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; and Judy Sheirbon,
Assistant Attorney General, for appellee State.

Kathryn Miller Todd and Onita Mohr of the Youth Law
Center, Des Moines, for the children.

Michael D. Blazek and Steven C. Reed of Reed & Blazek,
Des Moines, for the father.

Heard by Oxberger, C.J., and Donielson, J., and
McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

DONIELSON, J.

Upon the divorce of their parents, custody of J.T. and B.T., the two children here involved, was granted to their father. On May 24, 1989, the State filed a CINA petition alleging J.T. and B.T. were children in need of assistance. In the preceeding two-month period, two founded child abuse reports had been filed alleging the father had physically abused B.T.

Following an adjudicatory hearing, the juvenile court referee found both J.T. and B.T. were children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The juvenile court referee transferred custody of the children to the paternal grandmother.

A dispositional hearing was held, and on July 27, 1989, the juvenile court referee ordered custody of the children was to remain with the paternal grandmother and the family was to continue counseling. Following a review hearing on August 25, 1989, the juvenile court referee ordered the children be returned to the custody of their father.

Four months later, on December 21, 1989, the juvenile court referee again ordered temporary custody of the children be granted to the paternal grandmother pending a modification hearing. On July 16, 1990, the juvenile court held a hearing to review the prior dispositional order. The juvenile court confirmed the finding that both J.T. and B.T. were children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The juvenile

court then ordered the children be placed in the custody of the Department of Human Services for placement with a maternal aunt and uncle who had become licensed foster care parents.

On November 6, 1990, following a review hearing, the juvenile court referee found that J.T. and B.T. continued to be children in need of assistance and ordered temporary custody of the children remain with DHS. Another review hearing was held on January 17, 1991, and the juvenile court referee again determined custody of the children should remain with DHS. Following a review of a dispositional order, on August 16, 1991, the juvenile court ordered legal custody of the children be returned to the father.

The mother appeals the juvenile court's order placing the children once again in the custody of their father. The mother contends the juvenile court erred in failing to place the children in her custody. She argues she, unlike the father, has never been the subject of child abuse allegations. The State, the children's attorney, and the father all argue the juvenile court's order should be affirmed.

Our scope of review in these proceedings is de novo. In re Blackledge, 304 N.W.2d 209, 210 (Iowa 1981). We are primarily concerned with the welfare and best interests of the children. Iowa R. App. P. 14(f)(7).

The decision appealed is a review order entered pursuant to Iowa Code section 232.102(8) (1991). That section provides in part:

The court shall hold a periodic dispositional review hearing for each child in placement . . . in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted.

Iowa Code § 232.102(8) (1991). The alternative urged by the mother in this case is not even contemplated by the statute. The juvenile court did not have the option to transfer custody of the children to their mother, because the children's father--not their mother--had been granted their legal custody in the dissolution decree. The children's "home" was with their father. Therefore, the question facing the juvenile court was whether the children should be placed back in their father's home. In re B.L., 470 N.W.2d 343, 346 (Iowa 1991); In re Blackledge, 304 N.W.2d at 214.

On this issue the statute provides:

The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6.

Iowa Code § 232.102(8) (1991). We agree with the juvenile court's assessment of the evidence and affirm. J.T. and B.T. were properly returned to their father's custody.

The costs of this appeal are taxed to the mother.

For all the reasons stated, the judgment of the juvenile court is affirmed.

AFFIRMED.