FILED
DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE GUARDIANSHIP OF KINDY MARINE,	)	Filed December 23, 1980
A Minor Child,	)	0-302
VERDEAN MARINE,	)	3-64525
Appellant.	)	

Appeal from Pocahontas District Court - R. K. Richardson, Judge.

Verdean Marine appeals from the trial court's overruling of her application for termination of guardianship. REVERSED.

Blake Parker of Legal Services Corporation of Iowa, Fort Dodge, for appellant.

J. Desmond Crotty of Crotty & Fitzgerald, Pocahontas, for guardians.

William D. Thomas, Pocahontas, for guardian ad litem

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Verdean Marine appeals from the trial court's overruling of her application for termination of guardianship. We reverse.

On December 14, 1976, when she was fifteen years old, Verdean Marine bore her daughter, Kindy. Approximately one year later Verdean, who was then unemployed, traveled to California to obtain a job. Prior to her departure Verdean voluntarily procured the appointment of Jane and Ronald Eastman as guardians of Kindy through a court order. After spending roughly three weeks in California Verdean returned to Iowa and subsequently sought to regain custody of Kindy. The Eastmans refused to relinquish custody, and Verdean filed an application for termination of guardianship, which the trial court overruled.

Our review in this equity proceeding is de novo. In re Guardianship of Sams, 256 N.W.2d 570, 572 (Iowa 1977); Iowa R. App. P. 4. Our controlling concern is the best interest of Kindy. Sams, 256 N.W.2d at 572; Iowa R. App. P. 14(f)(15). We are not bound by the trial court's findings of fact, but we give them weight, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7).

Both statute, section 633.559, The Code 1979, and case law, In re Marriage of Smith, 269 N.W.2d 406, 407-08 (Iowa 1978), create the presumption that a child's natural parent is to be preferred as the child's guardian over one who is not a natural parent. The presumption is rebuttable. Patten v. Patrick, 276 N.W.2d 390, 397 (Iowa 1979). The third party can rebut the presumption only by making a strong case that the natural parent is unfit. In Interest of Mann, 293 N.W.2d 185, 187 (Iowa 1980); see Smith, 269 N.W.2d at 408-09.

Appellees have not sustained their burden of proof. See Mann, 293 N.W.2d at 187; Patten, 276 N.W.2d at 397; Sams, 256 N.W.2d at 572. R. Wayne Gambill, a social worker and employee of Iowa Children's and Family Services, visited with Verdean once in his office and three times in the home. The visits lasted about five and one-half hours in total, and the home visits allowed Gambill to observe how Verdean related to Kindy, who was in Verdean's home during two of Gambill's visits. Gambill testified that Verdean keeps a clean home having ample space and a warm atmosphere. Gambill's testimony indicates that Verdean affectionately cares for Kindy and Casey, who was born to Verdean subsequent to Kindy's birth. Gambill recommended that custody of Kindy be returned to Verdean. Another social worker, C. M. Chappelle of the Iowa

Department of Social Services, testified that Verdean's apartment is large, clean, well kept up, and adequate to meet the needs of Verdean and her children. Chappelle testified that Verdean adequately cares for Casey, who appears healthy and happy under Verdean's care. Chappelle recommended that Verdean be granted custody of Kindy.

Appellees attempt to show Verdean an unfit parent through testimony that Verdean keeps neither her home nor Kindy clean. However, this evidence is based on observations made roughly two years prior to trial and is overridden by the more recent observations of Gambill and Chappelle. Appellees further attempt to impugn Verdean's fitness as a parent by pointing out that she has sexual relations with a man out of wedlock and that during a one and one-half year period before the trial Verdean infrequently visited Kindy. While not without force, the impact of these circumstances is reduced by the fact that the man with whom Verdean is having sexual relations is the father of her third child. Also, for approximately five months appellees made visits by Verdean impracticable by removing Kindy to Arizona. Viewing the evidence as a whole, we do not think appellees have sustained their burden of making a strong case that Verdean is an unfit parent.

We hereby terminate the guardianship and order that permanent custody of Kindy rest in Verdean. Costs are assessed to appellees.

REVERSED.