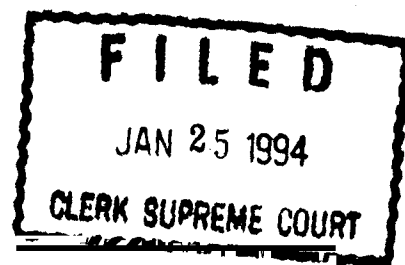


IN THE COURT OF APPEALS OF IOWA

No. 3-566 / 93-685



IN THE INTEREST OF J.M., O.M. and J.M.,

Minor Children.

E.M., Mother,

Appellant,

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Scott County,
John G. Mullen, Associate Juvenile Judge.

The mother appeals the juvenile and district court orders affirming the placement of her three children with their father. **AFFIRMED.**

Murray W. Bell of Newport, Bell & Oxley, Davenport, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; William E. Davis, County Attorney; and Henry C. Filseth and Gerald P. Schutte, Assistant County Attorneys, for appellee.

Neill A. Kroeger, Davenport, attorney and guardian ad litem for minor children.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

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DONIELSON, J.

Earline and Jimmie are the natural parents of Jerlonda, born March, 4, 1980, Jimmie, Jr., born May 27, 1982, and Octivia, born April 29, 1983. Earline and Jimmie were apparently separated in 1988. The children remained with the mother.

In early September 1990, after the mother was involuntarily committed in the Mental Health Institute, the State placed the children in foster care. In October 1990, by stipulation of the parties, the children were adjudicated CINA and were ordered to be retained in their foster homes. While in foster care, Jerlonda and Octivia displayed behavior indicative of mental disorders. Also in October, the mother was released from the Mental Health Institute and moved to Davenport.

In April 1991, the court ordered the girls into enhanced or specialized foster care. The court also ordered increased visitation between the children and their mother. Jimmie Jr. maintained contact only through letters. During this time, the father had unsupervised visits with the children.

In August 1991, the State placed Jimmie Jr. in his father's care. In September 1991, the court ordered Octivia and Jerlonda into residential treatment to address their behavioral problems. Octivia began sexual abuse therapy as she reported being sexual abused by a paternal uncle while in the father's care. In December 1992, the

court ordered that Octivia be placed with the father. In January 1993, the court ordered Jerlonda be placed with the father.

In a March 1993 review hearing, the court continued placement of the children with the father. The mother sought a review of this decision and the juvenile court affirmed. The mother appeals.

The mother claims she is now able to take care of the children. She claims she has her schizophrenia under control. She takes weekly medication to stabilize her illness and cooperates with her treatment program. She claims placement with the father is inappropriate because the father has lied to placement investigators and because sexual abuse of Octivia occurred while in the father's care.

In CINA proceedings, we review the evidence de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984); In re D.S., 437 N.W.2d 587, 588 (Iowa App. 1989). Of paramount concern is the welfare and best interests of the child. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact because that court has had the unique opportunity to hear and observe the witnesses first hand. In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986). When a parent seeks return of children removed on the basis of CINA proceedings, the burden is on the parent to prove by a

preponderance of evidence the children will not suffer harm if custody is returned. In the Interest of Welcher, 243 N.W.2d 841, 844 (Iowa 1976).

The juvenile court has the authority and responsibility to determine the custody of the children in their best interests. Iowa Code § 232.102 (1993); Iowa R. App. P. 14(f)(15). The court "shall make the least restrictive disposition appropriate considering all the circumstances of the case." Iowa Code § 232.99(3). Custody by a parent is one of the least restrictive dispositions available to the court. Iowa Code §§ 232.99(3), 232.101(1), 232.102(1)(a).

The supreme court consistently holds "it is highly desirable the status of children should be fixed as quickly as possible, be thereafter disturbed as little as possible, and then only for the most cogent reasons." In re the Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979), cited in In the Interest of Leehey, 317 N.W.2d 513, 516 (Iowa App. 1982). As in dissolution cases, cases arising under the juvenile code require a material and substantial change in circumstances before modifying custody and placement orders. Leehey, 317 N.W.2d at 516.

In this case, the three children have been moved through a variety of placements appropriate to their needs since being removed from their mother's care. We acknowledge the improvement she has made through continuing medication and counseling. We recognize her concern based

on the prior founded sexual abuse report. We also share the same concern as the juvenile court that she is not yet able to care for all three children at once. We find, therefore, it is in the best interests of the children that they remain in the stable placement of the custody of their father. To return them to their mother would disrupt their lives again, with potentially disastrous results. Accordingly, we affirm the judgment of the juvenile court and the review made by the district court.

AFFIRMED.