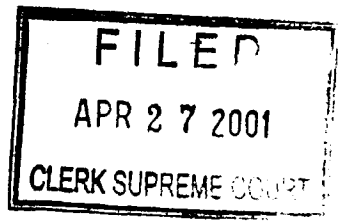
IN THE COURT OF APPEALS OF IOWA

No. 1-192 / 00-0967
Filed April 27, 2001



IN THE INTEREST OF K.D., Minor Child,

C.D., Mother,
Appellant.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth, District Associate Judge.

The mother of minor child K.D. appeals a juvenile court ruling ordering the child be placed in a residential facility. **AFFIRMED.**

F.D. Chip Baltimore, II, of Doran, Anderson & Baltimore, P.L.C., Boone, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and David A. Brown, Assistant County Attorney, for appellee State.

Lee R. Johnson of Johnson & Malloy, P.C., Ogden, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

SACKETT, C.J.

Connie, the mother of Katie, appeals[1] from a juvenile court ruling placing Katie, born January of 1984, in a residential facility. Connie contends the best placement for Katie is in her care. We affirm.

Katie is the youngest of four children born during Connie's marriage to Katie's father, Robert. Connie and Robert were divorced shortly after Katie's birth. Katie lived with her mother until she was thirteen but had visitations with her father. In January of 1997, at age thirteen, Katie was ordered by the court to reside in a Youth Shelter, but she left from there. When she was later apprehended by the police, she refused to return to a parental home. Services were offered Katie and her family, apparently without much success. At that time Katie was diagnosed as suffering from an Oppositional Defiant Disorder as a result of depression. Prozac was prescribed for Katie, but she did not take it, and she exhibited signs that she could be suicidal. Consequently in May of 1997, the juvenile court found Katie to be a child in need of assistance, and her custody was placed with the Department of Human Services for placement in group residential foster care. Katie, however, was granted the privilege of remaining in the home of a parent, apparently that of her mother Connie. The conditions of her remaining in her family home were that she attend a day treatment program, participate in individual counseling, receive psychiatric treatment, and abstain from the use of alcohol and mood-altering substances. The order provided that

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[1]. Connie sought permission from the Supreme Court to appeal a May 9, 2000, order. Though the state resisted Connie's application it was granted.

any violations would result in her immediate detention and placement in a residential program without a hearing.

On June 24, 1997, it was determined that Katie had run away from a placement and she was placed at the Boys' and Girls' home for a ninety-day treatment program, effective June 26, 1997. On June 25 of 1997, it was ordered that Katie be place in the Cherokee detention center. In August of 1997, Katie went to live with her father, Robert, in a different community, but on October 6 of that year she ran away. She quit attending school and was not receiving her recommended mental health treatment. Robert asked that Katie be admitted to a shelter for an evaluation prior to her returning to his home.

In November of 1998 the court ordered Katie to be given a physical and mental examination at a shelter in Lamoni, Iowa. The evaluation done there indicated that Katie had threatened to kill her father before she ran away. Connie had picked her up. It was also determined that Katie has an average IQ and should be able to perform normally in school. The evaluator at the shelter noted Katie had done well in the shelter and should be able to return to her mother.

By March 15 of 1999, Katie ran away from home, and her parents filed a missing person report. Katie was later located at her brother's home, and both parents agreed she should be transported to Judicial 5B Group Home and Shelter until recommendations could be made.

On March 29, 1999, Children & Families of Iowa filed a report indicating they had provided Katie family services for two months and that the family had

been moderately receptive, but that Katie was absent from school, drove a car without a license, showed disrespect to teachers, and was given detention and in-school suspension. A counselor said Katie appeared responsive to recommended techniques but did not use them outside of sessions.

A hearing was held on March 29, 1999, and Katie was ordered placed in a facility referred to as a "PMIC" facility. Katie was placed at Children's Square in Council Bluffs in early April of 1999. Katie initially was cooperative, but later she ran away, obtaining transportation from a man in exchange for sex. Katie was picked up and returned to the facility. She ran away a second time and was picked up again. This time she resisted by kneeing the apprehending officer in the groin. Katie was charged with using force to resist arrest and was then admitted to Jenny Edmondson's Psychiatric Unit and subsequently released back to Children's Square. But by the end of July of 1999, she was again on the run, and Children's Square requested she be discharged from their program and placed in a secure setting such as the Iowa Juvenile Training School. When Katie was found, her attorney waived a hearing, and she was placed in a detention facility.

An adjudicatory hearing was held on May 8, 2000. Katie and her father, Robert, requested Katie be placed at Forest Ridge near Estherville, Iowa. Her mother, Connie, objected, contending that Katie had run away at the facilities where she was placed and she would be better off in her home.

The juvenile court denied Connie's request to have Katie placed with her. The court ordered that Katie remain in the custody of the department and be put in a facility commensurate with her needs.

Connie argues on appeal that Katie should be allowed to return to her home where Katie's behavior has been no more defiant than it was during the time Katie resided in residential facilities. The State and Katie's guardian ad litem advance that the juvenile court order should be affirmed.

The difficult question before us is to decide what placement will better serve Katie. Appellate review of an order entered after a review hearing in a child in need of assistance proceeding is de novo. *In the Interest of Blackledge*, 304 N.W.2d 209, 210 (Iowa 1981). While we give weight to the juvenile court's findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses firsthand, we are not bound by them. Iowa R. App. P. 14(f)(7); In re *Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). Precedent is of little value in deciding this issue and each case must ultimately turn on its own particular facts. *In re S.V.*, 395 N.W.2d 666, 669 (Iowa App. 1986); *In the Interest of Leehey*, 317 N.W.2d 513, 516 (Iowa App.1982).

The first and governing concern is what can the court do that is most beneficial for Katie. See Iowa R.App.P. 14(f)(15); *In the Interest of J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). We recognize that Katie's best hope is to be in a stable and consistent environment. See *In the Interest of Leehey*, 317 N.W.2d at 516 (quoting *In re Marriage of Carrico*, 284 N.W.2d 251, 254 (Iowa 1979)). Katie's interests are presumed to be served by placing her with a birth parent if

that is possible. See *In the Interest of J.R.H.*, 358 N.W.2d at 320; also *In the Interest of Chad*, 318 N.W.2d 213, 218 (Iowa 1982). Connie is ready to accept Katie's placement. But that alone is not a sufficient reason under the facts of this case to place Katie in her care.

Katie suffers from a number of problems, and despite the concern of her two parents, the intervention of the Department of Human Services, and a number of services and placements in several facilities, little progress had been made at the time of the adjudicatory hearing that resulted in the order from which this appeal was taken. Katie, who was sixteen at the time of the hearing, is now seventeen years old. Katie has little time left in the juvenile system. Katie must be shown how to assume responsibility for her behavior. While the efforts made by others up to this point have not given her much assistance in this area, Katie and society will be best served if she can be helped in the short time she has left in the juvenile system.

Connie and Robert have both exhibited concern for their daughter. A reading of the record shows at times they felt helpless in addressing her problems. Connie is understandably frustrated that while under State care Katie was able to run away and put herself at considerable risk. Connie is further justified in complaining that on several occasions when Katie ran away, the Department and or the residential placement failed to locate her. Connie is justifiably frustrated that she has been criticized by the State for not being able to control Katie, yet under State care Katie was as defiant as she was in Connie's care.

Katie and her father, Robert, believe that Katie can be assisted in a different placement. We cannot predict that the placement at Forrest Ridge will be more or less successful than the other placement attempts proved to be. No one can assure Connie that placement at Forest Ridge will ensure the resolution of Katie's running away problems or her schoolwork problems, or that it will end her problems with depression and teach her the necessary skills an adult needs to meet life's challenges.

The juvenile authorities who have been in direct contact with Katie, Katie's guardian ad litem and the juvenile court have all come to the conclusion that Katie's interests are served by placing her in a residential facility at this time. They have worked with Katie, know her personally, and have an insight into her problems we cannot gain from a written record. Considering these factors and giving the required deference to the findings of the juvenile court, we affirm.

AFFIRMED.