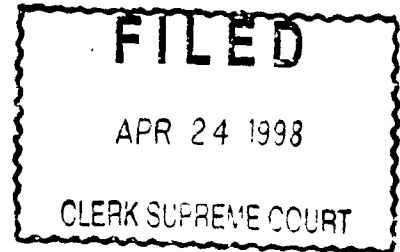


IN THE COURT OF APPEALS OF IOWA

No. 8-045 / 97-0995



IN THE INTEREST OF R.S., A Child,

**G.S., Natural Grandmother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Walter W.
Rothschild, District Associate Judge.

The grandmother appeals from the court order granting the father custody of
the minor child. **AFFIRMED.**

Kellyann M. Lekar of Randall, Griffin, Nelson & Hawbaker, P.L.C., Waterloo,
for appellant.

Donna Lesyshen of Tyler & Lesyshen, Waterloo, guardian ad litem for
appellee-child.

Jeffrey C. Peterzalek of Gallagher, Langlas & Gallagher, P.C., Waterloo, for
appellee-father.

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

SACKETT, P.J.

Gwen, the maternal grandmother of Rayvynn, born in 1989, appeals from a juvenile court order removing Rayvynn from her custody and placing the child with her birth father, Reed. In 1990, Rayvynn and her half-brother were found to be children in need of assistance. Rayvynn was placed with her paternal grandparents, and her half-brother, ten years older than she, was placed with his maternal grandparents, Gwen and her husband Charles. Some months later, Rayvynn was placed with Gwen and Charles. They were named Rayvynn's guardians under a permanency order entered in February 1995.

In 1996, Reed filed an application to modify the order and place Rayvynn's custody with him. The guardian ad litem recommended the transfer. The juvenile court modified the order placing custody with Reed and establishing specified visitation rights for Gwen. This appeal follows.

Gwen first contends the juvenile court should not have transferred the placement of Rayvynn. Our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re S.V.G.*, 496 N.W.2d 262, 263 (Iowa App. 1992). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

The modification of a dispositional order is provided for in Iowa Code section 232.103 (1997). A party seeking a modification of the custody provisions of a prior

dispositional order must show the circumstances have so materially and substantially changed that the interest of the child requires such a change in custody. *In re J.F.*, 386 N.W.2d 149, 152 (Iowa App. 1986); *In re Leehey*, 317 N.W.2d 513, 516 (Iowa App. 1982). Therefore, before the order is modified, Reed must first prove a substantial change in material circumstances and must then prove, under the new conditions, a change is better for the child. *See In re C.D.*, 509 N.W.2d 509, 511 (Iowa App. 1993). The focal point is Rayvynn's interest. *See In re C.G.*, 444 N.W.2d 518, 520 (Iowa App. 1989); *In re Dameron*, 306 N.W.2d.2d 743, 745 (Iowa 1981). We look at Rayvynn's long-range as well as immediate interests. *Dameron*, 306 N.W.2d at 745.

Rayvynn has been in her maternal grandparents' custody nearly all her life. She is bonded to her grandmother. She has fared well to this point in her development. During time with her grandparents, however, Rayvynn's father has played a substantial part in her development. He has exercised visitation. The evidence showed considerable stability in his life and employment. He has an excellent relationship with his daughter.

Rayvynn's mother is addicted to cocaine. Reed testified he allowed Rayvynn to be placed in her maternal grandparents' care because her half-brother was there and Reed was of the opinion Rayvynn ultimately would be reunited with her mother. The current state of the record indicates that unless Rayvynn's mother makes substantial changes in her life, she is not a fit custodian for the child.

The placement with Gwen became of concern when the guardian ad litem was made aware of certain allegations Charles may have sexually abused Rayvynn's mother about twenty years earlier and there was concern the same thing might happen to Rayvynn. The juvenile court found by a preponderance of the evidence Charles had sexually abused his daughters, including Rayvynn's mother and her sister.

The juvenile court in transferring custody considered the problem of Rayvynn's mother and the fact her half-brother, who had been placed in his grandparents' care at the same time Rayvynn was, had fallen into delinquent criminal behavior and his whereabouts were unknown. Reed has met the necessary burden and we find no reason to disagree with the juvenile court's decision to transfer placement.

Gwen next contends the guardian ad litem did not adequately represent Rayvynn. The guardian ad litem contends Gwen has no standing to advance this argument. We need not address the challenge to Gwen's standing. It is our obligation to support the interests of the child, and if we determine the guardian ad litem acted improperly, we will consider it on our own motion.

The record reflects the guardian ad litem decided before the petition was filed that Reed should be the custodial parent. The guardian ad litem was concerned about difficulties Reed had in exercising visitation as well as allegations about Charles's behavior.

An attorney serving as a guardian ad litem in child in need of assistance proceedings is held to a high standard of conduct. *In re J.V.*, 464 N.W.2d 887, 893

(Iowa App. 1990). We recognize investigation has to be the cornerstone of the guardian ad litem's representation of a child's interest. *Id.*

Gwen has complained the guardian ad litem had refused to return her phone calls and had not talked to Rayvynn prior to the proceeding. We recognize there were difficulties between Gwen and the guardian ad litem. The guardian ad litem should have visited with Rayvynn prior to the hearing. Firsthand knowledge of the parties and the circumstances is, at a minimum, helpful. *Id.*

The guardian ad litem is not designed to be the decision maker and is an advocate for the child, not the parents or the State. *Id.* It simply is not sufficient for a guardian ad litem to sit back, review the record and the arguments, and arrive at a decision. *Id.* We, however, on our own de novo review of the record come to the conclusion the guardian ad litem's position was correct.

Gwen also objects to certain evidence that was introduced. We have found it unnecessary to consider the evidence in our de novo review. We therefore need not consider her objection.

We affirm the juvenile court.

AFFIRMED.