IN THE COURT OF APPEALS OF IOWA

No. 6-113 / 95-1575

IN THE INTEREST OF N.M.W., A Minor Child,

B.W., Mother,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

Mother appeals a permanency order placing her twelve-year-old child in long-term foster care. **AFFIRMED.**

Kellyann M. Lekar of Clark, Butler, Walsh & Hamann, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Dan Block, County Attorney, for appellee.

David J. Mason, Waterloo, for minor child.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

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HABHAB, J.

Becky is the mother of Nina, who was born on July 24, 1983. The whereabouts of Nina's father are unknown, and he is not a party to this action.

The Department of Human Services (DHS) had been previously involved with this family due to several founded reports of child abuse. Nina was placed in foster care with Virginia and David Graves, family friends, from April 1989 to August 1990. Under an informal agreement, Nina lived with Virginia and David for some time in 1993 while Becky was in a residential treatment facility due to criminal activity.

When Becky was released from the residential treatment facility, she resumed care of Nina. Becky did not have a permanent address. She frequently moved from residence to residence with Nina, staying with various friends. DHS again became involved on September 29, 1993, when it received a report of alleged denial of critical care. On Friday, September 24, 1993, Becky had sent Nina to a friend's house with a note asking if Nina could stay there for the weekend. By the next Wednesday, September 29, 1993, the friend had not heard from Becky and asked DHS to intervene. DHS obtained a court order for the temporary removal of Nina and placed her with Virginia and David.

On December 1, 1993, the juvenile court entered an order upholding the temporary removal of Nina. The court found substantial evidence existed to show removal of the child was necessary to avoid imminent risk to the child's life or health. DHS was ordered to provide rehabilitative services to Becky and to assist her to

obtain a stable residence and employment. 000193

On February 1, 1994, the juvenile court entered an order finding Nina was a child in need of assistance under Iowa Code section 232.2(6)(c)(2). The court determined Becky had failed to exercise reasonable care in supervising her child. The evidence showed that on six occasions Becky had left Nina in the care of others and did not provide adequate supervision. Also, Becky had a history of living with men who were abusive to her. Although Nina was not physically harmed, it was emotionally devastating for her to watch her mother be beaten. The court determined Nina should remain in foster care with Virginia and David. Becky was permitted visitation.

Becky was very resistant to services. She did not believe there were any problems in her parenting of Nina, and she felt DHS was improperly interfering in her life. A psychological evaluation of Becky stated, "it does not seem likely that she will be able to substantially change or improve her parenting effectiveness." Becky was inconsistent in visiting Nina, sometimes going for several weeks without visiting her.

Additionally, Becky continued to live in the homes of other people and did not obtain a permanent residence of her own which would be suitable to allow her to care for Nina. Because of Becky's frequent moves, DHS often did not know where she was and Becky did not keep in contact with her social worker. Becky failed to participate in family therapy. DHS asked her several times to make appointments for family therapy and Becky did not do so.

David died in July 1994. Nina continued to remain in Virginia's care, except for a period of time in March and April 1995. Virginia stated she had been unsure about raising Nina by herself, but after Nina had been placed with another foster family, Virginia decided she had made a mistake and asked to have Nina returned. Virginia has agreed to have Nina in her home until she reaches the age of majority. Nina has some behavioral problems. She receives individual counseling and participates in adolescent group counseling. Also, Virginia and Nina receive family therapy.

On January 10, 1995, the State filed a motion for a permanency hearing. The State alleged Nina could not be returned to her mother at any foreseeable time in the future. Termination of parental rights was not seen as an option because Nina was bonded with her mother and wished to continue visitation with her. The State sought a permanency order for long-term foster care.

A permanency hearing was held on August 23, 1995. In ruling on the motion, the juvenile court found there had been little, if any, change in the mother's circumstances since the time Nina was removed from her care. The court determined Nina could not be returned to Becky's care because she was unable to provide appropriate food, clothing, and shelter for Nina, as well as adequate supervision. The court concluded Nina should remain in the custody of DHS with placement in long-term foster care.

Becky appealed. She contends the State did not present clear and convincing

evidence that DHS had provided services to her to correct the situation which had resulted in Nina's removal from her home. She claims DHS failed to make efforts to reunite her with Nina. She states DHS did not timely offer services, or placed the burden on her to request services. She also states it was burdensome to arrange visitation through DHS instead of arranging visitation directly with Nina. Becky asks us to reverse the permanency order.

Appellate review of a permanency hearing is de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Weight should be given to the juvenile court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7). The best interests of the child control the court's decision. Iowa R. App. P. 14(f)(15). There is a rebuttable presumption that the child's best interests are served by parental custody. *N.M.*, 528 N.W.2d at 96.

Iowa Code section 232.104(3) provides:

> Prior to entering a permanency order pursuant to subsection 2, paragraph "*d*," convincing evidence must exist showing that all of the following apply:
> a. A termination of the parent-child relationship would not be in the best interest of the child.
> b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.
> c. The child cannot be returned to the child's home.

We note that in a permanency hearing the State needs only to show these elements by convincing evidence, not by both clear and convincing evidence. *In re A.D.*, 489 N.W.2d 50, 52 (Iowa App. 1992). All parties agree a termination of the

parent-child relationship is not in Nina's best interests. Becky also admits Nina cannot be returned to her home at this time. Thus, the only real issue in this case is whether services were offered to Becky to correct the situation which led to Nina's removal.

We find there is convincing evidence in the record to show Becky was offered services. DHS arranged for Becky to have a psychological evaluation and a substance abuse evaluation. DHS attempted to engage in direct family-centered services supervision. DHS also offered family therapy. The evidence shows DHS offered services to Becky, but she did not take advantage of these services.

In our de novo review, we determine it is in Nina's best interest to be placed in long-term foster care. Nina needs a secure and permanent placement. The amount of patience for Becky's actions must be reasonably limited because patience with parents can soon translate into intolerable hardship for children. *See In re S.V.G.*, 496 N.W.2d 262, 264 (Iowa App. 1992). The Iowa supreme court has stated:

> Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be *constant, responsible, and reliable.*

In re C.D., 509 N.W.2d 509, 513 (Iowa App. 1993) (quoting *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990)) (emphasis added).

We affirm the juvenile court's permanency order placing Nina in long-term foster care.

AFFIRMED.