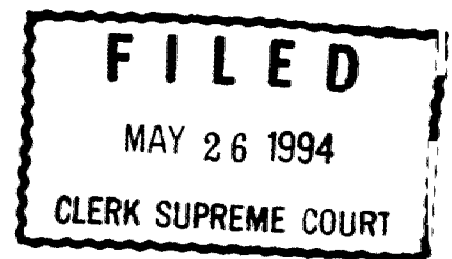


IN THE COURT OF APPEALS OF IOWA

No. 4-168 / 93-1260



IN THE INTEREST OF S.D.N., a/k/a S.C., A Minor Child,
M.C., Paternal Grandmother,
Appellant.

Appeal from the Iowa District Court for Polk County,
Karla J. Fultz, Associate Juvenile Court Judge.

Paternal grandmother appeals an order placing
guardianship and custody of the minor child with former
foster parents after parental rights were terminated.
AFFIRMED.

Joseph W. Seidlin of Berger & Culp, Des Moines, for
appellant.

Christopher R. Pose of Connolly, O'Malley, Lillis,
Hansen & Olson, Des Moines, for appellees intervenors.

Karl Wolle and Neil Levitt of Juvenile Defender Office,
Des Moines, for appellee minor child.

Susan Conn, Des Moines, for natural mother.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Margaret is the thirty-four year old paternal grandmother of S.D.N., born in July 1991. She lives with four of her six sons whose ages range from three to twelve. Allen and June are the foster parents of S.D.N. They presently have two adopted children.

S.D.N. was first placed with Allen and June in August 1991 after she was removed from her parents' custody. S.D.N. resided with June and Allen until December 1991, when she was placed in Margaret's home for purposes of reunification with her natural parents. June and Allen maintained regular contact with S.D.N. after her placement with Margaret.

On August 12, 1992, the State filed a petition to terminate the parental rights of S.D.N.'s parents. In November 1992, Margaret informed June and Allen they were no longer welcome to visit S.D.N. On November 25, 1992, June and Allen were allowed to intervene in the termination proceeding for purposes of possible placement and adoption. S.D.N.'s natural parents' rights were terminated on May 28, 1993. Margaret requested the court consider her for S.D.N.'s placement. Both parties wished to adopt S.D.N.

A hearing to determine guardianship and custody of S.D.N. was held August 10 and 11, 1993. The guardian ad litem and court-appointed special advocate for S.D.N. recommended S.D.N. be placed with June and Allen. Two

clinical social workers testified S.D.N. could quickly rebond with her former foster parents without suffering significant damage.

The juvenile court ordered S.D.N. placed in the legal custody and guardianship of June and Allen. Margaret now appeals, contending there was nothing to warrant removal of S.D.N. from her care.

Our review in custody cases is de novo. In re L.S., 483 N.W.2d 836, 837 (Iowa 1992); Iowa R. App. P. 4. We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses. Iowa R. App. P. 14(f)(7). Our first and foremost consideration is the long-term best interest of the child. In re Marriage of Vrbn, 359 N.W.2d 420, 424 (Iowa 1984); Iowa R. App. P. 14(f)(5). A child needs a stable and continuing environment. In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. In re Marriage of Bartlett, 427 N.W.2d 867, 877 (Iowa App. 1988) (citing Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988)).

Margaret contends the juvenile court erred in removing S.D.N. from her care. We disagree. The record indicates clearly it is in S.D.N.'s long-term best interests to award custody to Allen and June. Margaret lives in rent-assisted housing with four of her sons. At least two of these

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children were previously adjudicated child in need of assistance (CINA), and two are special needs children. Her sole source of income is ADC and food stamps. In addition, Margaret's ex-husband, Dennis Sr., frequently resides with her despite his history of alcohol and domestic abuse.

In placement decisions the determination of parenting ability must necessarily be based on what is likely to occur in the future, not only because of present conditions but also because of what has occurred in the past. See In re J.M.W., 492 N.W.2d 686, 690 (Iowa 1992) (citation omitted). The record indicates S.D.N.'s health has not improved as expected while in Margaret's care. Social workers expressed concern at whether S.D.N. was receiving proper nurturing during her placement with Margaret. S.D.N. also suffered a broken elbow for which Margaret failed to provide a clear explanation and failed to seek proper treatment.

Margaret testified she saw no problem with leaving S.D.N. in the sole care of Dennis, Sr. when she leaves town and she has done so. We are also concerned with the effect and influence S.D.N.'s natural father, Dennis, Jr., will have on S.D.N. Even though his parental rights have been terminated, Dennis Jr. has free access to Margaret's home. While we recognize Margaret loves S.D.N., the record shows placement with Margaret is not conducive to the needs of S.D.N.

Allen and June are suitable persons under Iowa Code section 232.117(3) (1993) to have custody of S.D.N. The record shows Allen and June are fit parents who can best provide the environment which will bring S.D.N. to healthy physical, mental and social maturity. We conclude it is in the best interests of S.D.N. to award custody and guardianship to Allen and June.

AFFIRMED.

Cady, J., concurs; Sackett, J., concurs specially.

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SACKETT, J. (concurring specially)

I concur specially. I write separately because I have found this case most difficult and have not reached the decision I did easily.

A little girl is loved by three people that have all had substantial involvement with her during her short life. Two of these people, Allen and June, are married to each other and are well educated. They enjoy an upper middle class existence in one of the Des Moines area's best neighborhoods. The other person, Margaret, the child's thirty-four-year-old paternal grandmother, live in a rent-assisted house, depending on aid to dependent families and food stamps to care for her children.

The child spent the early months of her life with Allen and June and more recently has been in Margaret's care. The only finding I can make from this record is the child is substantially bonded to Margaret.

The majority has compared households and has determined the child is better served being in Allen's and June's custody. It is easy when judging parenting abilities to do so by applying middle-class values. I hope I am not doing that here. It is not a court's place to remove a child from his or her family merely because there may be someone in a superior position to raise that child. If we assume such a position, then, in fact, only the most worthy in our society will be allowed to raise children.

I have incredible respect for Margaret who has been dealt a difficult hand in life but agreed to assist her son in gaining custody of his biological child. She has devoted a very major part of her life being a mother and, in assessing her request for custody, I have given substantial weight to her experience as a mother. I recognize she has had some problems with her children but this does not make her a bad mother.

June and Allen have two other young children. They have not yet taken children through their teenage years and there is no assurance in this record they will handle these situations in a manner superior to Margaret.

My first blush would be the child may have more opportunities with Allen and June but I have no crystal ball to predict the future of this child in either home. Experience in practicing law, being on this court, and raising my own children have convinced me I have no way of predicting this child's future will be better served in either home and I make no attempt to do so. Death, divorce, change of mates, and reverse of financial positions, among other things, can quickly change a home situation. Furthermore, courts generally have little knowledge of what goes on behind closed doors in homes. Study has convinced me there is a strong support for maintaining a child's biological ties where possible.

I have voted to affirm because I have given considerable deference to the decision of the juvenile

judge who saw the parties, watched them testify, and has substantial background in issues involving families and children.