

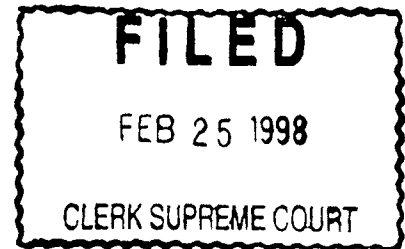
IN THE COURT OF APPEALS OF IOWA

No. 7-639 / 97-597

000111

**IN THE INTEREST OF
L.F., A Child,**

**B.F., Mother,
Appellant.**



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

Mother appeals the juvenile court's permanency order placing her minor child
with the child's father. **AFFIRMED.**

Judith J. Morrell, Davenport, for appellant.

Thomas J. Miller, Attorney General, Debora Hewitt Neumeyer, Assistant
Attorney General, and Henry C. Filseth, Assistant County Attorney, for appellee-
State.

Considered by Cady, C.J., and Sackett, and Vogel, JJ.

CADY, C.J.

Brandie appeals the juvenile court's permanency order placing her child, Lindsay, with Lindsay's father, Duane. Brandie maintains the district court erred by failing to find sufficient evidence existed to support the return of Lindsay to her. We affirm the district court.

Lindsay was born May 8, 1982, and is fifteen years old. After Brandie and Duane divorced, Brandie cared for Lindsay and her brother, Nathan. Following the divorce, the children had little contact with their father. Brandie cared for the children until she suffered severe head injuries in a car accident in June 1993. After the accident, she was hospitalized and in rehabilitation until March 1994. While Brandie was recovering from the accident, social workers made an effort to involve Duane in the children's lives and transported them to Illinois to visit him.

In April 1994, the juvenile court entered an adjudicatory order finding Lindsay to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (6)(c)(2), (6)(g), and (6)(n). Lindsay was placed in the care of her maternal aunt and uncle until she moved to the home of her maternal cousin. Following allegations of inappropriate sexual contact by her cousin's boyfriend, Lindsay stayed with her mother for a period of approximately four days. During her stay with her mother, Brandie allowed Lindsay to stay up with two of Brandie's male friends on a school night until the early morning hours. Lindsay was subsequently placed in shelter care, and later in the temporary custody of her paternal aunt. While staying with her aunt,

her father visited and called her. In March 1997, the court entered a permanency order granting Duane custody of Lindsay.

Brandie appeals. She claims the district court erred by failing to return Lindsay to her.

I. Standard of Review

Our review of a permanency hearing is de novo. *See In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). We give weight to the juvenile court's findings of fact, but are not bound by them. *Id.*; Iowa R.App.P. 14(f)(7).

II. Permanency Order

In reviewing a permanency order, our paramount concern is the best interests of the child. *See In re N.M.*, 528 N.W.2d at 96. In determining the best interests of the child, we look to present conditions and past parental performance because “[i]nsight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing.” *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Additionally, a rebuttable presumption exists that the child's best interests are served by parental custody. *See In re N.M.*, 528 N.W.2d at 96.

Brandie claims the juvenile court erred by determining there was insufficient evidence to return Lindsay to her. Specifically, she asserts she has made significant progress in improving her circumstances since her children were removed from her care. In support of her position she cites regular psychiatric treatments, changes in

her medications, and additional therapy in developing healthy relationships and parenting skills. She also emphasizes her ability to live on her own and manage her finances.

While Brandie has made progress since the time of her head injury, her decision making capabilities remain limited. Tragically, these limitations are especially apparent in her parenting decisions, as revealed during Lindsay's brief stay with her. Brandie allowed Lindsay to stay up past 2:00 a.m. on a school night while entertaining two male guests. Brandie made no effort to find a means for Lindsay to go to school the next day and Lindsay consequently missed school. In addition to this incident, Brandie has made inappropriate sexual and abusive remarks to the children, and has threatened to harm them. Moreover, Brandie indicated she did not understand why the children were taken from her care. She believed they were removed because she physically abused them. Her inability to fully comprehend the reason the children were removed raises further concerns about her parenting capabilities.

Although Duane had limited contact with Lindsay following the divorce, he indicated a genuine desire to care for her after Brandie's accident. Duane's home was also evaluated and found to be suitable for the children.

We find clear and convincing evidence exists Lindsay should not be returned to Brandie's care and affirm the permanency order.

AFFIRMED.