IN THE COURT OF APPEALS OF IOWA

No. 9-038 / 98-954

IN THE INTEREST OF R.M. and S.M.
Minor Children,

N.W., Mother,

Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Daniel Block, Associate Juvenile Judge.

Mother appeals juvenile court order placing long term care, custody and control of son with paternal grandparents and sole custody of daughter with her father. **AFFIRMED.**

Kellyann M. Lekar of Roberts and Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Steve Halbach, Assistant County Attorney, for appellee-State.

Heard by Huitink, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Nancy W. appeals a juvenile court ruling placing long term care, custody, and control of her son with the child's paternal grandparents as well as sole custody of her daughter with the child's father. We affirm.

Tony (a.k.a. Rodolfo) was born to appellant, Nancy W. and Scott S. in 1995. Sierrah was born to Nancy and Craig F. in 1996. The identity of the father of each child was determined by paternity testing. Both fathers initiated contact with their respective child after paternity was confirmed.

In 1996, the Department of Human Services (hereinafter "DHS") received a report of child abuse regarding Tony and Sierrah alleging that they had been living in either a car or a house without running water and heat. The report also alleged that Sierrah, then one month old, had a high fever and severe diaper rash. As a result, the court granted a verbal removal order and placed the children in foster care. At the time of removal, the foster parents found a marijuana pipe in a diaper bag Nancy had given them.

The State subsequently filed a child in need of assistance (CINA) petition. The juvenile court found Nancy could not adequately care for the children and had used drugs in their presence. The court adjudicated Tony and Sierrah children in need of assistance and ordered them to remain in foster care. After adjudication, Nancy did little to cooperate with her service providers, remained in a nomadic lifestyle, and only infrequently visited the children. She eventually settled in Waukon. The children, however, remained two hours away in Waterloo.

A permanency hearing was eventually held in February 1998, and pursuant to Iowa Code sections 232.104(2)(d)(2) & (3), the juvenile court entered an order placing Sierrah in the sole custody of her father and Tony in the long term care, custody, and control of his paternal grandparents. The order did not condition the new custody determinations on protective supervision by DHS and it directed that any contact between the children and their mother would be at the discretion of the custodians.

Nancy appeals. She contends the court erred in failing to reunite the children with her, failing to condition the custody determinations on continued DHS supervision, and in placing visitation between her and the children at the discretion of the custodians.

I. Scope of Review. Appellate 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. *See* Iowa R. App. P. 14(f)(7). The best interests of the child control the court's decision. *See In re N.M.*, 528 N.W.2d at 96.

II. Placement of the Minor Children. The court's permanency order was entered pursuant to section 232.104(2)(d) of the Iowa Code. Prior to entering the permanency order, the state was required to establish by convincing evidence that:

> (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.

Iowa Code § 232.104(3) (1997); *In re Interest of A.D.*, 489 N.W.2d 50, 52 (Iowa App. 1992). At issue are the services offered by the state under subsection (b) and the finding the child could not be returned to the home under subsection (c).

Upon review of the entire record, we are satisfied the state met its burden. DHS offered a range of services aimed at reuniting the mother with her children including parental skills development, individual counseling, family centered services, and visitation. The disposition order entered after the CINA proceeding as well as subsequent custody reviews clearly stated DHS would offer and Nancy was to take advantage of family oriented services and counseling. *See, e.g., In re L.B.*, 530 N.W.2d 465, 468 (Iowa App. 1995). DHS has met its obligations under subsection (b). If the services failed to prepare Nancy to resume parental responsibilities it was because she failed to sufficiently participate in those programs, not because they were, in and of themselves, inadequate. *Id.*

Additionally, we are convinced the children cannot be returned to their mother's care at this time. Nancy routinely failed to take advantage of the services offered by DHS. She complains the DHS case plan was too demanding and that the placement of her children in Waterloo makes it difficult for her to exercise her visitation rights while living in Waukon.

We find the DHS case plan was not overly demanding. The purpose of such plans is to give the parent an opportunity to create a safe and healthy living environment to which a removed child may return. It is incumbent upon the parent to make every effort to demonstrate their desire and ability to resume his or her parental

role. We recognize financial constraints might limit the ability of a parent to travel great distances in order to exercise visitation rights. However, Nancy brought this constraint upon herself when she chose to move two hours away from her children.

We are pleased Nancy has made some progress with her parenting skills and housing situation under the DHS plan. However, this progress has occurred only recently. In determining whether a child can be returned, we must consider his or her short and long term interests. *See In re C.G.*, 444 N.W.2d 518, 520 (Iowa App.1989) (citing *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The parent's past performance provides insight into this determination. *Id.* Part of our focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs. *See In the Interest of A.S.T.*, 508 N.W.2d 735, 737 (Iowa App.1993). We are not convinced the recent improvements sufficiently demonstrate the ability of Nancy to care for the children's best interests.

Nancy also argues the order of the juvenile court should be called into question because it splits siblings and places them with custodians alleged to have questionable parental skills. Keeping siblings together has been an important factor in juvenile proceedings. *See In re Interest of T.J.O.*, 527 N.W.2d 417, 420 (Iowa App. 1994) (citing *In re L.B.T.*, 318 N.W.2d 200, 202 (Iowa 1982)). However, the best interests of the children are our overriding concern, and where separation better promotes these interests, such separation may be warranted. *See In re Marriage of Kurth*, 438 N.W.2d 852, 854 (Iowa App. 1989). Moreover, the best interests of the child is presumed served by placement of the child with a natural parent whenever possible.

See In re S.V., 365 N.W.2d 666, 669 (Iowa App. 1986) (citing *In re J.R.H.*, 358 N.W.2d 311, 320 (Iowa 1984). When the preference for keeping children together conflicts with the preference of placing them with their natural parents, the latter may outweigh the former in some circumstances. *See In re S.V.*, 365 N.W.2d at 671.

Under the circumstances of this case, we determine the interests of the children are best served by keeping each close to their respective natural parents.[1] Both fathers have indicated a willingness to allow and encourage the children to interact with each other as much as possible. That the fathers live very close to one another weighs heavily in this regard. This arrangement best preserves and promotes the children's relationship with each other and with their natural parents. We find little evidence in the record indicating the natural fathers or Tony's paternal grandparents are not suitable custodians.

III. Supervision and Visitation. Nancy argues the juvenile court should have made the permanency placements subject to the protective supervision of DHS. She further contends the court erred in placing visitation between her and the children at the sole discretion of the custodians.

Iowa Code section 232.104 does not require the court to impose continued protective supervision by DHS of a child under a permanency order. Nor does it describe who shall have control over visitation. Subsection (4), however, does allow the court to place restrictions upon contact between the child and the child's parent

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[1] Though Scott's parents will actually have custody of Tony, the record indicates Scott has a very close bond with his parents, and lives with them during certain times of the year.

if doing so is in the child's best interests. *See* Iowa Code § 232.104(4) (1997). The juvenile court found no basis in the record for requiring supervision by DHS or providing court direction regarding visitation. Upon de novo review of the record, we agree with the juvenile court. If significant problems with visitation should occur in the future, they can be addressed by the trial court upon application by the natural mother.

AFFIRMED.