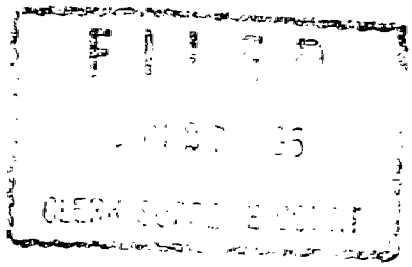
**IN THE COURT OF APPEALS OF IOWA**



No. 5-287 / 94-1513

**IN THE INTEREST OF A.M.O. and A.C.O., Minor Children,**

**B.O., Mother,**
Appellant,

**M.P., Grandmother,**
Appellee.

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Appeal from the Iowa District Court for Scott County, Michael Woods, Associate Juvenile Judge, and Edward B. deSilva, Jr., Judge.

Mother appeals the district court's permanency order placing her minor children with their maternal grandmother. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

Scott H. Walters of Dwyer, Wing, Zamora, Taylor & Walters, Davenport, for appellant.

Murray Bell of Newport, Bell & Oxley, Davenport, for appellee grandmother.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

Janice H. Roemer, Davenport, guardian ad litem for minor children.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

Brenda appeals the juvenile and district court permanency orders which transferred guardianship and custody of her children, Autumn, born in October 1979, and Alison, born in July 1983, to her mother, Margaret. We reverse and remand with instructions.

Margaret, on her own initiative, filed a child in need of assistance (CINA) petition in January 1992 because Brenda's substance abuse problems left her unable to properly care for the children. In February the court entered a temporary removal order placing the children in Margaret's custody.

Brenda entered substance abuse treatment and graduated in March 1992. She then entered an drug and alcohol treatment center in Carroll where she attended weekly group and individual counseling. The children were adjudicated CINA in April 1992. *See* Iowa Code § 232.2(6)(n) (1991).

A June 1992 permanency plan adopted by the court required Brenda to (1) complete substance abuse treatment, (2) attend a support group, and (3) maintain regular contact with her children, among other things. The department of human services was to provide family centered services.

At a September 1992 dispositional hearing the court determined the children could not be returned to Brenda's care as she was in treatment and ordered they remain in Margaret's custody. The court found however, that "all reports indicate [Brenda] has

maintain[ed] sobriety since February 1992" and "[r]eunification is contingent upon [Brenda's] continued sobriety and obtaining personal and financial independence."

Brenda returned to the Quad Cities area in November 1992 after completing treatment and undergoing further substance abuse and psychological evaluations as required by the case plan. She obtained employment, found housing, and attempted to visit the children. Although the original case plan remained in effect, no individual or family services were offered upon Brenda's return to the area.

Despite the lack of contact with Brenda or her family, the department caseworker recommended in a June 3, 1993, letter to the court that Margaret be awarded guardianship of the children. However, at a June 14 review hearing, the court ordered the case permanency plan be revised. The new plan, dated July 12, 1993, provided a detailed family centered service package to be offered through a contract with Bethany Home.

In December 1993 the department issued a third case permanency plan recommending a guardianship be established naming Margaret as guardian. A contested permanency hearing took place in April and June 1994.

The juvenile court found reasonable efforts had been made to resolve the harm for which the children were adjudicated CINA (substance abuse and inability to provide proper care), but they could not be returned to Brenda's care. The court also determined further efforts were not justified when balanced against the children's need for

permanency. The court appointed Margaret guardian and custodian of the children and awarded Brenda visitation. The district court affirmed the juvenile court's permanency order.

We review permanency orders de novo. *In re A.D.*, 489 N.W.2d 50, 52 (Iowa App. 1992) (citation omitted). We give weight to the fact findings of the juvenile court, but we are not bound by them. Iowa R. App. P. 14(f)(7). Our primary consideration is the best interest of the child. Iowa R. App. P. 14(f)(5).

Brenda contends the juvenile court erred in finding by convincing evidence that the services offered were adequate to correct the situation which led to the children's removal as required by Iowa Code section 232.104(2)(d)(1). We agree.

Brenda's overall compliance with the case plan is disputed by Margaret and the State. Our review of the record shows Brenda successfully completed two substance abuse treatment programs between March and October 1992. As part of her treatment she attended group and individual counseling sessions in compliance with the case plan. She continued to participate in group meetings and underwent weekly counseling at Bethany Home after her discharge.

Prior to entering a permanency order, convincing evidence must show (1) termination of the parent-child relationship is not in the best interest of the child; (2) services were offered to the family to correct the situation which led to the child's

removal; and (3) the child cannot be returned to the home. Iowa Code § 232.104(3) (1993).

We are disturbed by the hiatus in services provided to Brenda between November 1992 and June 1993. The department's overall lack of involvement in this case is apparent after a review of the record. The caseworker had little or no contact with Brenda, the children, or Margaret, prior to recommending establishing a guardianship. No home visits were ever conducted. Most contacts were accomplished by telephone calls.

In addition, the department made no attempt to arrange counseling for the entire family other than to provide Brenda with a phone number for the Mississippi Valley Therapy Center. Brenda attempted to arrange family counseling around her work schedule but due to a counselor's family illness, they could not start until June 1994.

The counseling received by the children and Margaret was provided through an employee assistance program at Margaret's place of employment. Brenda was not eligible to participate in this counseling because she was not a member of Margaret's household. This family has never received the counseling recommended in the case plan.

Furthermore, any evidence of Brenda's improvement is found only in the quarterly reports provided by Bethany Home. These reports show Brenda has remained

sober since February 1992. The concerns expressed by the caseworker and the juvenile court about Brenda's ability to remain sober are unsubstantiated by the record.

Finally, the juvenile court questioned Brenda's commitment to providing long-term care for the children. The court's skepticism stems from Brenda's failure to have "good one-on-one time with the children." The record shows, however, Margaret has made it very difficult for Brenda to visit the girls by placing restrictions on the days and times of visitation.

Even though this case was initiated by Margaret, the State is not relieved of its responsibility to make reasonable efforts to reunite the family prior to requesting transfer of guardianship and custody of the children. *See* Iowa Code § 232.102(9) (1993). In this case we do not find convincing evidence that reasonable services were offered to this family prior to entry of the permanency order.

Extensive family counseling involving Brenda, the children, and Margaret is necessary prior to determining whether the children should be returned to Brenda's care. This is in the children's best interests.

The record reveals several problems which must be addressed in family therapy, including Autumn's mistrust of her mother, Margaret's enabling of Brenda's lack of self-sufficiency, and the breakdown in communication between Margaret and Brenda. Until the State at least makes a serious attempt to resolve these issues, any consideration of a permanency order is premature.

Accordingly, we reverse the decision of the juvenile court and remand with instructions. The children shall remain in Margaret's care, subject to supervision by the department of human services. The department shall submit an updated or revised case plan to the juvenile court and also make reasonable efforts to resolve the adjudicatory harm resulting in removal of the children.

Costs of this appeal are assessed to the State.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**