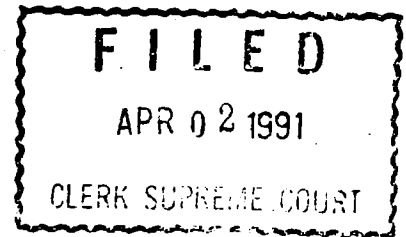


IN THE COURT OF APPEALS OF IOWA

No. 1-086 / 90-1345



IN THE INTEREST OF A.D.M., A Child,
V.M., Natural Mother,
Appellant.

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Appeal from the Iowa District Court for Johnson County,
Sylvia A. Lewis, District Associate Judge.

The natural mother appeals a CINA adjudication placing
the child in the custody of the father. **AFFIRMED.**

Mary K. Hoefer of Mears, Zimmermann & Mears, Iowa City,
for appellant mother.

Bonnie J. Campbell, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Charles K. Phillips, Assistant
Attorney General, for appellee State.

Dennis S. Clark, Iowa City, guardian ad litem for the
child (appellee).

M. Rebecca Seidl of Barker, Cruise, Kennedy, Houghton &
Foster, Iowa City, for the father.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

The child in question, A.D.M., is a girl born in September 1987. T.S., her father, and V.M., her mother, were not married to each other. They lived together from the time of the child's birth until July 1988.

In August 1988, shortly after the parents had separated, the mother was found intoxicated beside a pond with the child in her arms. The child was placed in emergency foster care. Following an emergency removal hearing, the child was placed in the home of her father's parents. Her father was also residing there at the time.

Later in 1988, the child was adjudicated to be a child in need of assistance (CINA) pursuant to the stipulation of both parents. A subsequent dispositional order confirmed the child's placement in the home of her paternal grandparents. She has remained in that home since.

Both the mother and A.D.M. were enrolled members of the Standing Rock Sioux Tribe. In 1989 the mother returned to that tribe's home in South Dakota and to her family of origin there. However, she has since moved to Kansas City. She asserts she has given up alcohol, has returned to school, and has generally reformed her life.

In 1990 the 1988 CINA adjudication was set aside because it had been accomplished without notice to the Standing Rock Sioux Tribe. The State was permitted to apply for a renewed CINA adjudication, with notice to the tribe. Following a hearing, the child was once again

adjudicated to be a child in need of assistance. She was placed in the home of her father, subject to Department of Human Services (DHS) supervision.

The mother has now appealed the second CINA adjudication. She challenges the sufficiency of the evidence to establish the child is in need of assistance at the present time. She asserts the father and his parents have cared for the child well. She argues she has recovered from alcohol dependency and reformed her chaotic lifestyle. She claims there is no evidence the child remains in need of assistance. She argues the question of the child's custody should be litigated between the parents in an ordinary district court custody proceeding, without any involvement by the DHS or by the juvenile court.

We review CINA adjudications de novo. In re A.C., 415 N.W.2d 609, 614 (Iowa 1987) cert. denied 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988). We give weight to the fact findings of the juvenile court, but are not bound by them. Iowa R. App. P. 14(f)(7). Our first and governing consideration is the best interests of the children involved. Iowa R. App. P. 14(f)(15); In re D.L., 410 N.W.2d 201, 202 (Iowa App. 1986).

A rebuttable presumption exists that maintaining children in their parents' home serves their best interests. In re T.D.C., 336 N.W.2d 738, 740 (Iowa 1983). However, that interest may be forfeited by certain parental conduct. In re N.H., 383 N.W.2d 570, 574 (Iowa 1986). In

determining the best interests of children, we look at present conditions and past performance, because the past performance "may be indicative of the quality of future care" the parents are capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We have reviewed the facts of this case. Both parents have an alcohol problem. Both are attempting to get the problem under control. Both are immature in their approach to life and its responsibilities. T.S., the father, continues to reside with and rely on his parents. They, in turn, have provided most of the nurturing for little A.D.M. for the past two years. A.D.M. has benefited greatly from these grandparents' care. She would be well cared for by them if we affirm the district court.

V.M., the mother, appears to have made some progress in her life. However, the progress is sporadic and short term. She has trouble maintaining her sobriety. She started junior college, but dropped out after one semester. She was living at one time with her people of the Sioux Indian tribe in South Dakota. There she could receive the support she needed from her family and friends. However, this encouraging development was curtailed by V.M.'s apparently abrupt move to Kansas City. The actual reason for the move does not appear in the record. She had recently given birth to a second child, apparently also out of wedlock.

We are convinced V.M. has her hands full at the present time. She is caring for a new baby. She is apparently receiving Aid to Families with Dependent Children and is not working. She is attempting to maintain her sobriety. However, she needs to achieve some long-term stability in her own life before we can say A.D.M. would be better off with her than with the paternal grandparents.

Our main concern remains, as always, the best interest of the child. The child is presently in a positive environment. She is in the custody of her natural father. She is living with and being cared for by two loving grandparents. A.D.M. has a strong measure of security and stability in her life. We are reluctant to dismiss the CINA adjudication at the present time.

The parents apparently wish to litigate which of them is entitled to custody. Both unwed parents share the right to legal custody. In re J.R.H., 358 N.W.2d 311 (Iowa 1984). However, they may not litigate custody while the juvenile court retains jurisdiction of the case through CINA proceedings. See In re the Guardianship of Murphy, 397 N.W.2d 686, 688-89 (Iowa 1986). The juvenile court may, however, "authorize the part[ies] to litigate concurrently in another court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action." Id.

The juvenile court is mandated to review cases such as the present one eighteen months after the initial

disposition. Iowa Code § 232.101(2). Thereafter, the juvenile court must review the case annually. Id. No more than two consecutive annual extensions are permitted. Id.

We determine neither parent is ready at the present time to fully assume the responsibilities and duties of parenting. V.M. needs to concentrate on her sobriety and establish long term stability in her life. T.S. needs to become more independent, maintain his sobriety, and show he has the ability to provide for A.D.M. We note there has been no intervention by the grandparents, who appear to be A.D.M.'s primary caretakers.

The district court's order in the present case is not harsh. Custody is left with the father, with protective supervision by DHS. DHS is to facilitate visitation with the mother. A case plan was to be submitted to district court by DHS. Neither parent has appealed any portion of the case plan.

We determine there is sufficient clear and convincing evidence to warrant the CINA adjudication. The district court shall reevaluate the parents' progress as provided by law. Given sufficient growth by the parents, full custody of A.D.M. will be returned to them in the near future. We strongly encourage both parents to continue improvement in their own personal development.

We affirm the district court.

AFFIRMED.