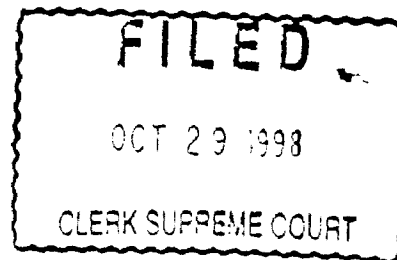


IN THE COURT OF APPEALS OF IOWA

No. 8-436 / 98-0174

IN THE INTEREST OF C.J.M., Minor Child,  
K.C., Mother,  
Appellant.



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Appeal from the Iowa District Court for Benton County, Nancy A. Baumgartner, Judge.

The mother appeals from the district court's decision in a child in need of assistance dispositional ruling. **AFFIRMED.**

Ronald L. Ricklefs, Cedar Rapids, for appellant.

Karla M. Wolff, Cedar Rapids, for appellee-father.

Barbara Liesvield, Cedar Rapids, guardian ad litem for minor child.

Thomas J. Miller, Attorney General, and Charles K. Phillips and Kathrine S. Miller-Todd, Assistant Attorneys General, for appellee State.

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

**MAHAN, J.**

Katrina, the child's mother, appeals from the juvenile court's decision in a child in need of assistance dispositional ruling. Katrina contends the juvenile court erred in awarding custody of the child to his father, Wayne. We affirm.

Cody was born on June 29, 1992. Katrina was fifteen and Wayne was nineteen at the time of his birth. The parents never married. However, Wayne immediately acknowledged paternity and was present for Cody's birth.

Wayne and Katrina have had starkly contrasting lifestyles both before and after Cody's birth. The juvenile court noted Wayne came "from a very stable, extended family background." There are numerous family members in the area and Wayne's social group has always consisted of family, friends, and church. Wayne graduated from high school in 1991 and attended Kirkwood Community College for two years. He received a degree in farm and ranch management. Wayne has worked on the family farm with his father since 1993 and will continue to do so in the future.

Wayne married Stephanie on December 14, 1996, after dating three and one-half years. Wayne adopted Stephanie's biological daughter. Wayne and Stephanie have a son, Jonathan, born April 16, 1997. At the time of the dispositional hearing, they were expecting another child in March of 1998. Stephanie stays at home and cares for the children. Neither Wayne nor Stephanie abuse alcohol or drugs and neither has been convicted of any crimes. Wayne stayed very involved in Cody's life and the two enjoyed regular contact.

Conversely, Katrina has had a very difficult and dysfunctional life. She was sexually abused by her father at age five. The abuse continued for approximately three years. Her father was convicted and sentenced to prison. After serving eleven months, he was paroled and returned home. Understandably, Katrina started to display behavior problems and "rebelled against all authority." She began using alcohol at age fourteen, started using marijuana at seventeen, and began to experiment with methamphetamine when she was twenty. She dropped out of school in the eleventh grade but did receive her GED from Hawkeye Tech in 1995.

Katrina was responsible for Cody's care from the time of his birth until July of 1997. Katrina and Cody lived with Katrina's parents during a portion of this time. However, Katrina admitted to "several unstable relationships" with several men in the period since Cody's birth. The record shows at least four relationships occurred. One of those relationships was with Brad, the father of her youngest child, Trystan, who was born in November of 1996.

The most damaging relationship lasted from late 1996 to May of 1997; Katrina was dating a man who introduced her to methamphetamine. She became addicted and used the drug for five to six months. Her use progressed to the stage where she began to hallucinate. She became very unstable, and she and Cody moved around a lot. It is clear Cody was exposed to the effects the drugs were having on his mother.

Katrina "crashed" from the use of drugs on July 9, 1997. She had gone without sleep for seven days straight while continuously using methamphetamine.

She wrote a suicide note and ingested several different kinds of pills. Upon finding her the next morning, her mother rushed her to the hospital where doctors were amazed she survived. She remained hospitalized for two days. Realizing she had a problem, Katrina entered Pathways Drug Treatment Center immediately following her release from the hospital.

Katrina stayed at Pathways for only two weeks. At Pathways, she met and became involved with David, another man who was also a methamphetamine addict and who was on parole for serious felonies. He was kicked out of Pathways, and Katrina left with him before completing her own program. Katrina and David moved in with Katrina's parents, where Cody had been staying since her hospitalization.

This stay was also short-lived. Katrina testified as follows:

Me and David got caught having sex and they were going to kick David out while I got an attitude and told them that it takes two and if they were going to kick him out, they had to kick me out. So I took the kids and left.

On July 26, 1997, during the middle of the night, Katrina brought Cody to Wayne's house. She indicated to Wayne she was dropping Cody off because she was unable to provide for his care. Cody was clad only in a T-shirt and underwear.

After conferring with Katrina's parents and receiving their encouragement, Wayne received a Temporary Custody Order on July 28, 1997. Although this marked the first time Wayne had legal custody of Cody, the two were very close. In the two years prior to the Temporary Custody Order, Wayne had visitations with Cody

approximately forty-seven out of fifty-two weekends each year and exercised extended one- to three-week visits at various times.

Cody remained with Wayne and Stephanie until an Emergency Removal Order was entered on September 11, 1997. Cody was removed from the home following Stephanie's report to the Department of Human Services (DHS) that Wayne had repeatedly hit Cody on September 10. Cody was placed in the temporary custody of the DHS and all parties stipulated to an adjudication that Cody was a child in need of assistance.

A dispositional hearing was held on December 16, 1997. A dispositional order was filed on December 29 placing Cody in the custody of Wayne and Stephanie under the protective supervision of the DHS. It is from this dispositional order Katrina has appealed.

**I. STANDARD OF REVIEW.** Child in need of assistance proceedings are reviewed de novo. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996); *In re L.S.K.*, 451 N.W.2d 819, 821 (Iowa 1990). We give weight to the findings of the juvenile court, especially as to the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). The first and governing consideration of the court is the best interest of the child. Iowa R. App. P. 14(f)(15).

**II. PLACEMENT ORDER.** The juvenile court found clear and convincing evidence existed to support placing Cody with his father subject to the protective supervision of the DHS pursuant to Iowa Code section 232.101(1). We agree. The

reasoning in support of this dispositional order is sufficiently shown in the following portions of the juvenile court's December 29, 1997 order:

All social workers involved in this case believe that the incident where Wayne slapped Cody several times is really not representative of how he parents. The Court's impression of Wayne from the reports and his testimony is that he is not dangerous or violent, but more naive and in need of parenting education. The Court was very impressed with his wife, Stephanie, because she took Cody and her other child from the home when the abuse incident occurred on September 10, 1997, and immediately notified the Iowa Department of Human Services about what was going on. There was another incident where Wayne and Stephanie were arguing and Cody fell down a three step flight of stairs from the kitchen to the back door, and he was not injured. The record shows, however, that the parents have not only participated in counseling through Lutheran Social Services, but also with their pastor. Both report that they have learned a lot from these counseling sessions, and that the tension in their home has been greatly reduced and things are going much better. Neither Wayne nor Stephanie have a criminal record, and neither have ever had any problems with substance abuse or use of illegal drugs. As stated above, both have extended families in the area with whom they are close, work with, and go to church with. They can and do rely on their families for help in raising their children. Stephanie stays at home and takes care of the children.

There are problems in both of Cody's parents' lives. The father physically abused Cody, and has experienced difficulties in his marriage, largely due to problems arising from a blended family and the expected birth of another child. However, having reviewed the reports, and particularly from listening to the father and his wife testify, the Court was convinced that Wayne and his wife have gone a long way to alleviate the problems that resulted in the physical abuse of Cody. The Court is also convinced that physical abuse is unlikely to occur again, and that if it does, Stephanie has proved she will protect the child. The Court finds that Cody would not be at risk if returned to his father's care. The Court further finds that any problems Cody may experience in his father's care are *more than outweighed by the risk of living with his mother.*

....

The only stability Cody has had in his life is the constancy of his visits with his father and his paternal grandparents. Not only did Wayne have visitation with Cody for most weekends of the last two years, but he also took care of Cody whenever Katrina wanted to go

out, had other things to do, or when her other child was sick and it was too difficult to care for both children at one time. Wayne has obviously provided a lot of respite care for Cody during all the turbulent times of Katrina's life. Cody should not have to return to his mother's care to see if yet another romantic interest is going to work out this time. Her past history tells the Court that it will not work. Katrina's relationship with David appears to be a recipe for disaster. Both lack insight into their problems, and they share a history of drug abuse, sexual abuse, and other anti-social behavior. On top of that, David has a serious felony record, and has served prison time.

The child abuse which occurred is certainly a concern of this court. However, it was thoroughly and thoughtfully considered by the juvenile court and we agree with the conclusions made. We also note the State agrees with those conclusions and, therefore, argued for affirmance.

We find the record in this case supports the decision of the juvenile court and that decision is affirmed in its entirety.

**AFFIRMED.**

Huitink, J., concurs; Sackett, P.J., specially concurs without opinion.