

IN THE COURT OF APPEALS OF IOWA

No. 1-562 / 11-0761
Filed July 27, 2011

**IN THE INTEREST OF D.K. Jr. and R.K.,
Minor Children,**

**D.K. Jr. and R.K.,
Appellants.**

Appeal from the Iowa District Court for Carroll County, James McGlynn,
Associate Juvenile Judge.

The guardian ad litem of two children appeals following a permanency
hearing. **AFFIRMED.**

Martha Sibbel, Carroll, for appellants.

Robert Peterson, Carroll, for mother.

Mark Rasmussen, Jefferson, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John Werden, County Attorney, and Tina Meth-Farrington,
Assistant County Attorney, for State.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

The guardian ad litem of two children, ages six and three, appeals following a permanency hearing, asserting the juvenile court erred in transferring custody of the children to the father.¹ Because we agree with the juvenile court that termination would not be in the children's best interests, we affirm the court's conclusion that the children should be transferred back to the father's custody pursuant to Iowa code section 232.104(2)(d)(2) and the permanency plan.

The permanency hearing was held in conjunction with the termination of parental rights hearing and began in September 2010. The father was in prison completing a sentence for his fifth operating while intoxicated (OWI) conviction. The court continued the hearing until May 2011 to give the father additional time to work towards reunification after his release from prison in January 2011. By the next hearing date in May 2011, the father had made progress to assume his role as father of the children. He was participating in visitation, his home had been approved for placement, and he spoke with the children on the telephone nearly every day. The father had stable employment, was enrolled to attend college classes that fall, and lived with his girlfriend of several years and her two children.

The State recommended the children be transitioned to the custody of the father. The father agreed. The guardian ad litem requested placement with the mother's sister, but if relative placement was not ordered, the guardian ad litem alternatively recommended termination of the parental rights of both parents.

¹ The State filed a notice to the court agreeing with the argument of the guardian ad litem, but does not separately appeal.

The mother resisted termination of her parental rights, but did not claim she was ready, willing, or able to assume care of the children. The court dismissed the State's petition to terminate parental rights, finding: "Although it appears that the grounds alleged for termination of parental rights have probably been proven, the Court finds that termination of parental rights would not be in the best interest of the children." As the court further observed:

None of the various [placement] options is a perfect, risk-free solution. Each has some benefits and each has risk of adverse consequences for the children. . . . Both of these children have special needs. The children are currently placed together in a foster home. Everyone seems to agree that the foster parents have done a wonderful job with these children. Unfortunately, the foster parents are not a pre-adoptive home. Long term foster care for these young children is not an allowable permanency option. Therefore termination of parental rights will require the removal of these children from these foster parents and placement into a pre-adoptive home. There is concern that D.K. requires a perfect kind of home to address his serious treatment needs. It is unknown how long it will take DHS to find this perfect placement for D.K. Furthermore, the Court is concerned that it may not be possible to find a pre-adoptive home for D.K. which can address all of his needs which is also willing and able to accept R.K. and deal with her issues. The Court finds that it would not be in the best interest of the children to be separated. The Court has not been presented with any kind of assurance from the State that a well qualified adoptive home could be found to address D.K.'s special needs and to take both children. In the Court's opinion it is very telling that these children have not been moved from the current foster home during the lengthy period this hearing was adjourned. It is reasonable to conclude that there would be an equal or greater delay going forward in finding a pre-adoptive home.

The juvenile court further determined the children should be transferred back to the father's custody. The court noted that the mother's sister had not completed nor even requested a home study although there was "plenty of time" for its completion prior to the hearing. Other concerns about the placement with the sister also existed and ultimately, the court concluded the children's

placement with the sister was not a viable option due to the further delay that would be incurred and the uncertainty of such a placement.

The juvenile court also observed that placement with the father was the best option for the children:

[The father] is willing to assume custody of both children and asserts that he is ready and able to do so. Unfortunately, the father has a lengthy history of substance abuse. He has incurred five life time OWI's. He had been viewed as a placement option by DHS early on in this case but then he incurred his fifth OWI and was sentenced to prison. Since his release from prison, the father has been very cooperative with DHS and has participated in visitation. His home appears to be appropriate. A long time paramour lives with him with two of her children. The continuing concern with placement with the father is his substance abuse problem. Another relapse will cause placement with him to fail because it is likely that he will be returned to prison. It remains to be seen whether he will be able to maintain sobriety. It also remains to be seen whether he will be able to successfully address the serious treatment needs of his children. What he does have going for him is the love, affection and commitment that a parent can bring to the situation. Moreover, he is the one option who is prepared to take custody of the children now or at least after a short period of transition. Under the circumstances the Court finds that it would be in the best interest of the children to be placed permanently with the father.

We agree the children should be transferred back to the father's care under the supervision of the Iowa Department of Human Services pursuant to Iowa Code section 232.104(2)(d)(2). Reportedly, the father has made good progress toward becoming a safe and stable placement option for the children. Of course, the success of this placement will depend in large part on the father's continued substance abuse treatment and his responsibility and insight for how his decisions and actions impact the children. The juvenile court gave careful consideration of the alternatives before it, and we agree that the juvenile court's

findings and conclusions are supported by the father's recent improvements, cooperation, and accountability.

On our de novo review, we find nothing in the record on appeal that would give cause to reverse the juvenile court's ruling. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (de novo review). Accordingly, we affirm. See Iowa Ct. R. 21.29(1)(a), (b), (d), (e).

AFFIRMED.