

IN THE COURT OF APPEALS OF IOWA

No. 2-1173 / 12-1922
Filed January 9, 2013

**IN THE INTEREST OF J.B. AND M.B.,
Minor Children,**

**A.P., Father.
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father appeals from the juvenile court's permanency order for guardianship and order transferring custody. **AFFIRMED.**

Allen A. Anderson of Anderson Law Firm, Oskaloosa, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Lisa Holl, County Attorney, and Seth Harrington, Assistant County Attorney, for appellee State.

Ryan Mitchell of Orsborn, Bauerly, Milani & Grothe L.L.P., Ottumwa, for appellee mother.

Shannon Woods, Bloomfield, for appellee custodial grandparent.

Mary Krafka, Ottumwa, attorney and guardian ad litem for minor children.

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

POTTERFIELD, P.J.

A father, A.P., appeals from the child in need of assistance (CINA) permanency order continuing custody of his children (J.B. and M.B.) with the children's maternal grandmother (Grandmother), granting Grandmother guardianship of the children, and transferring jurisdiction of the guardianship proceedings to the district court. He argues custody and guardianship should not have been given to Grandmother, the State failed to prove the children could not be returned to his custody, and reasonable efforts to reunite him with the children were not made. The State argues the juvenile court's orders were in the children's best interests; the guardian ad litem and Grandmother join in the State's argument. We affirm, finding that the court properly continued custody and granted guardianship to Grandmother, that the court properly declined to grant custody to A.P., and A.P.'s reasonable efforts argument is not preserved for our review.

I. Facts and Proceedings

In May of 2011, J.B. and M.B. were adjudicated children in need of assistance (CINA) after a report that their mother drove while intoxicated with them in her car. Upon investigation, it was discovered that the mother was drinking frequently and the children had observed domestic violence between the mother and her boyfriend. The children were placed in their maternal grandparents' home, where they had previously resided off and on during their lives. The children remained and thrived in this home throughout the CINA proceedings. Their maternal grandfather died in June of 2012. Both Grandmother and the children's mother live in Iowa. A.P. lives in Connecticut,

where J.B. was born and M.B. was conceived. He has not seen either of the children in about two years. He sporadically calls the children, stating he tries to average calling once a week. During the permanency hearing in July of 2012, A.P. stated it would be inappropriate for the children to be placed with him at that time, but the court should grant more time for him to connect with the children. An interstate compact home evaluation of A.P. and his Connecticut home was conducted and approved, with the only negative finding that the home was small for the children. Despite this positive study, the court continued custody with Grandmother and granted her guardianship over the children. A.P. appeals both the continuation of custody and guardianship decisions of the juvenile court.

II. Analysis

We review CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We give weight to the factual findings of the district court, but are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). While family reunification is an important part of CINA proceedings, our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000).

A.P. first urges that continuing custody and placing guardianship with Grandmother was not in the children's best interests. We consider this argument with his second issue, that "[t]he State failed to prove by clear and convincing evidence that the children could not be returned to the father's custody." During the permanency hearing, the following exchange took place between A.P. and his attorney on direct examination:

Q. At the very least, you would like to be involved in a guardianship, but you're not asking that the kids be moved immediately; is that correct?

A. That is correct.

Q. Okay. And you understand, as the social worker testified, that moving the kids right now might have some trauma; is that correct?

A. I agree. I feel if they come to visit, that would be good.

Q. Yes. And you're asking for visits, but you're not asking that they be moved immediately to your custody; is that correct?

A. Correct.

In this exchange, A.P. admits removal of the children would cause trauma. He does not appeal the juvenile court's decision not to allow him additional time before entering a permanency order.

Our primary concern is the best interests of the children. *Id.* A.P., the children's social worker, and the children's grandmother all agree that removal from the grandmother's custody would be traumatic for the children at this time. Appointment of the children's grandmother as guardian at this time allows her to make necessary decisions regarding the children, and A.P. can always later petition for that guardianship to be removed. See Iowa Code § 232.118(1) (2011) (allowing removal of a court-appointed guardian). We therefore agree with the juvenile court that declining to place the children with A.P., continuing custody with Grandmother, and granting guardianship of the children to Grandmother is appropriate.

Finally, A.P. argues that reasonable efforts were not made to reunite him with the children. He did not raise this argument during his testimony before the juvenile court at the permanency hearing, nor does he show he raised this argument at any other point during this or prior proceedings. He also fails to point to specific services he should have been offered. He argues now he has not been afforded "reasonable visitation opportunities," however, visitation would entail having the young children fly to A.P.'s Connecticut home, or having A.P. fly

to the children. We therefore find A.P.'s reasonable efforts argument is not preserved for our review. *C.B.*, 611 N.W.2d at 495; *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005).

AFFIRMED.