

**IN THE COURT OF APPEALS OF IOWA**

No. 8-695 / 08-1167  
Filed September 17, 2008

**IN THE INTEREST OF R.L., Jr.,  
Minor Child,**

**R.R.L., Sr., Father,  
Appellant.**

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

A father appeals a juvenile court order that denied a change in the  
permanency plan for his son. **AFFIRMED.**

Dani Eisentrager, Eagle Grove, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, and Eric Simonson, County Attorney, for appellee State.

Lynn Seaba, Goldfield, for minor child.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Richard, born in January 1997, resided with his father, R.L. Sr. after his parents separated. His mother died in 2002.

In June 2005, R.L. Sr. stipulated that eight-year-old Richard was a child in need of assistance pursuant to Iowa Code section 232.2(6)(f) (2005) because his emotional problems were not being treated in his father's care. The juvenile court adjudicated Richard, but ordered that he remain in his father's custody. On October 15, 2005, the juvenile court removed the boy by ex parte order because an arrest warrant had been issued for R.L., Sr. for a charge of domestic abuse assault. Richard was placed in foster care. He has not lived with his father since his removal.

In November 2005, R.L. Sr. was ordered to serve 345 days in jail for violation of probation. R.L., Sr. stipulated to a transfer of Richard's custody to the mother of R.L., Sr., Nancy, and Richard began living with his paternal grandmother in June 2006. At a permanency hearing on January 11, 2007, R.L., Sr. acknowledged that he was unable to retake Richard's custody in the near future. He and all other parties agreed that guardianship would be placed with Richard's paternal grandmother.

The following year, R.L., Sr. requested the court to order Richard's return to his home. At the contested permanency review hearing on June 30, 2008, Richard, then eleven years old, provided a letter that expressed his desire to stay with his grandmother with whom he had lived for two years. The State, the guardian ad litem, and the child's paternal aunt, Stacie Elmore, agreed that

guardianship with the grandmother should continue. The court denied R.L., Sr.'s request to modify the permanency order, and Richard's custody remained with his grandmother. R.L., Sr. appeals, claiming that the juvenile court erred in refusing to change the permanency plan.

## **II. Standard of Review**

"Our review of permanency orders is de novo. We review both the facts and the law and adjudicate rights anew on the issues properly presented. We give weight to the juvenile court's findings, but are not bound by them." *In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005) (citations omitted).

Following the entry of a permanency order under Iowa Code section 232.104 (2005), Richard shall not be returned to the custody of his father, over a formal objection filed by child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning Richard to his father's custody would be in the child's best interests. Iowa Code § 232.104(5) (2007). Our responsibility in modification of a permanency order is to look solely at the best interests of the child for whom permanency had been ordered. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). "Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs." *Id.* There is a rebuttable presumption that the best interests of a child are served when custody is with the natural parents. *In re N.M.*, 491 N.W.2d 153, 156 (Iowa 1992).

## **III. Merits**

We find that it is in Richard's best interests to remain with his grandmother, Nancy. She has provided a safe and stable home environment for

Richard. Nancy is home when Richard gets home from school and is available to spend time with the child regularly. Nancy lives near Richard's Aunt Stacie and her sons, with whom the child plays frequently.

Richard would benefit from staying in his current school instead of being forced to change schools in order to live with his father.<sup>1</sup> Richard plays on the school's basketball team, plays soccer, and sings in his school's chorus. His counselor testified that stability is very important for the child. Richard has not presented behavioral problems while living with his grandmother. In addition, he has made it clear that he wants to continue living with Nancy. Nancy is willing to continue caring for Richard.

R.L., Sr. argues that his son should be returned to his home because he provides stability and structure that are not present in Nancy's home. Nancy and R.L., Sr.'s sister, Stacie, testified at the June 30 permanency hearing and acknowledged that R.L., Sr. had recently improved his behavior. R.L., Sr. is currently employed and going to school full-time to become a mortician. He shares an apartment with his girlfriend with whom he has been involved for over one year. The girlfriend has a good relationship with Richard. R.L., Sr. participated in anger management and counseling on a weekly basis while in jail. He arranged for counseling for Richard in October 2007 to help Richard deal with anxiety. R.L., Sr. is actively involved in that counseling and also in personal counseling. He visits his son regularly every other week, and there have been no problems with these visits. Richard has benefited from his father's consistent interest in his well-being.

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<sup>1</sup> At age eleven, Richard has attended eight different schools.

In spite of all of these improvements, Nancy and Stacie expressed concern about R.L., Sr.'s alcohol use and late nights out. They testified that in the recent past, R.L., Sr. abused drugs and alcohol, stayed out all night, engaged in criminal and assaultive behavior, yelled at Richard, and engaged in many short-term relationships. We find that R.L., Sr.'s choices in the recent past create concern regarding his future such that it would be unfair to Richard to gamble his present safety and stability on the hope that his father's recent progress is permanent. It is in Richard's best interests to stay in the loving home provided by his grandmother these last years.

**AFFIRMED.**