

IN THE COURT OF APPEALS OF IOWA

No. 7-252 / 07-0338

Filed April 25, 2007

**IN THE INTEREST OF K.H.,
Minor Child,**

**R.J.H., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals from a permanency order placing his daughter into a guardianship with her grandparents. **AFFIRMED.**

Mark Milder, Waverly, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn and Steve Halbach, Assistant County Attorneys, for appellee State.

Christina Shriver, Hudson, for mother.

Linnea Nicol, Waterloo, guardian ad litem for minor child.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

A father appeals from a permanency order placing guardianship and custody of his daughter with her paternal grandparents. He contends that the juvenile court erred in determining the child could not be returned to the physical care of her parents and in refusing to return her to the parents on a thirty-day trial basis. We find the juvenile court's actions should be upheld.

I. Background and Facts

R.H. is the father and M.Z. is the mother of K.H., born in February of 2000.¹ In September 2005, child in need of assistance (CINA) proceedings led to K.H.'s removal from her parents' home because the family home was determined to place her at risk due to the physical hazards and unsanitary safety conditions in the home. Concerns were also reported in regard to R.H.'s history of sexual fetishes and diagnosis of infantilism. K.H. was placed in the home of her paternal grandparents, where she has remained since her removal.

On February 1, 2007, a permanency hearing was held to determine whether the grandparents should be named guardians and K.H. placed in their custody or she should be returned to the care of her parents. The juvenile court found that services had been provided by the Iowa Department of Human Services (DHS) to correct the situation that led to K.H.'s removal. Despite these services, the family-centered service provider, who had met with the family on 113 separate occasions, did not recommend K.H. be returned to her parents' home due to on-

¹ R.H. and M.Z. are also the parents of another daughter. Their parental rights to that daughter were terminated in 2002 when they were unable to provide for her substantial medical needs. R.H. is also the father of an older daughter who was adopted out at a very young age.

going safety concerns and the parents' unresolved behavioral and mental health issues.² The service provider testified that guardianship with her paternal grandparents was K.H.'s best option. K.H.'s guardian ad litem asked the juvenile court to follow DHS's recommendation that K.H. not be returned to the parents' home.³

The juvenile court found that the parents were residing with another couple in a four-bedroom home, and that R.H. had expressed a sexual interest in the female. The court found that R.H. had made some progress in meeting K.H.'s emotional needs and addressing the issues that led to her removal. However, the juvenile court also found M.Z.'s "bullying behaviors and lack of empathy or support of the father and child continue to place the child at risk."

The juvenile court also found that K.H. had a bond with her parents. She was, however, thriving in the home of her paternal grandparents. The court found "a substantial probability does not exist that the child could be returned to either parent's care in the next three months,"⁴ and it was in K.H.'s best interests that guardianship and custody be transferred to her grandparents. The juvenile court issued an order placing K.H. with her paternal grandparents pursuant to Iowa Code section 232.104(2)(d)(1) (2005). The court ordered the parents be

² At trial, the family-centered service provider testified to safety concerns including leaving knives, box cutters, and medications within K.H.'s reach; a nest of mice living on the front porch; and the parents' failure to remove the hazards despite prompting from the service provider. Behavioral concerns included poor co-parenting between M.Z. and R.H., name calling, ignoring K.H.'s request for attention, and abrupt yelling. Mental health issues included both parents engaging in infantile behaviors, such as wearing diapers and using pacifiers for sexual gratification and emotional nurturing.

³ K.H.'s guardian ad litem filed a joinder with the State's response to this appeal.

⁴ On September 18, 2006, the juvenile court deferred permanency for three months.

allowed reasonable visitation with K.H., but gave the grandparents authority, consistent with K.H.'s best interests, to place any necessary restrictions upon the contact. The father appeals.

II. Merits

We review permanency orders de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We give weight to the juvenile court's findings of facts, especially when considering the credibility of witnesses, but are not bound by them. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995); *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Our primary consideration is the best interests of the child. Iowa R. App. P. 6.14(6)(o); *In re C.D.*, 509 N.W.2d 509, 511-12 (Iowa Ct. App. 1993).

R.H. contends that the juvenile court erred in determining that K.H. could not be returned to the physical care of her parents because the parents had complied with the court's and DHS's expectations and demonstrated an ability to protect and nurture the child. Upon our careful de novo review of the record, we conclude, as did the juvenile court, that the facts justify placing K.H. with her grandparents. We agree that "clear and convincing evidence has been shown that long-term placement in the home of [the paternal grandparents] is in the child's best interests."

Using R.H. and M.Z.'s past performance as a predictor of future performance, there is convincing evidence that they are unable to provide a safe and nurturing environment for their daughter. See *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995) ("A parent's past performance may be indicative of the quality of future care the parent is capable of providing."). There are safety concerns due to the presence of hazards in the home. Additionally, R.H. has

posted pictures of himself on the internet wearing only a bib or only diapers. M.Z. continues to associate with persons on the internet who engage in pedophilic behaviors and does not realize how this puts K.H. at risk. The record supports the juvenile court's conclusion that, although some progress has been made, the parents' behaviors continue to place K.H. at risk. We agree with the juvenile court's determination that K.H. could not be returned to the physical care of her parents.

R.H. further contends that the juvenile court erred in refusing to return K.H. to her parents on a thirty-day trial basis. The State contends that R.H. waived any error by initially making the request at the permanency hearing.⁵ R.H. does not contend he raised the issue prior to the permanency hearing but states the issue was preserved because "[t]he father and mother of the child at interest contested the State's recommendation for a guardianship and affirmatively requested that the Court return custody of the minor child on a trial basis at the final permanency hearing."

A parent is required to object to the services provided or request additional services as early as possible so timely and appropriate changes can be made. *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000). Failure to do so may result in waiver of appellate review on this issue. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Because R.H. failed to raise the issue before the final guardianship hearing, we conclude he has not preserved the claim for our review on appeal.

⁵ Although the State's brief to this court states the mother has appealed the permanency order and refers to M.Z. throughout, the petition on appeal was filed by the father, and we have assumed the State is responding to R.H.'s brief and arguments.

Assuming R.H.'s claim had been preserved, we find the juvenile court did not err in refusing to return K.H. to her parents on a thirty-day trial basis. For the foregoing reasons, we have found the parents have not demonstrated an ability to protect and nurture the child. Additionally, R.H. presented no proof that an additional trial basis would result in anything other than a delay in permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("patience with parents can soon translate into intolerable hardship for their children").

We therefore affirm the juvenile court's order placing guardianship and custody of K.H. with her paternal grandparents.

AFFIRMED.