

IN THE COURT OF APPEALS OF IOWA

No. 7-736 / 07-1519
Filed October 24, 2007

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

C.H., Father,
Appellant.

Appeal from the Iowa District Court for Delaware County, Thomas Straka,
Associate Juvenile Judge.

A father appeals from the permanency order that removed custody of the
child from him and placed it with the mother. **AFFIRMED.**

Stephanie C. Rattenborg of the Rattenborg Law Office, Manchester, for
appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John Bernau, County Attorney, and William Werger, Assistant County
Attorney for appellee State.

Steven Carr of Carr & Carr, Manchester, for appellee mother.

Daniel Swift of Swift & Swift, Manchester, for appellee M.W.

David Baumgartner, Strawberry Point, and Shawn Harden, Independence,
for minor child.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

Krissa and Chris, who were never married and do not live together, are the parents of Hunter, born in 2001. Krissa's five children, including Hunter, were removed in February 2006 due to her uninhabitable home and drug use. At the time of removal there was no district court order regarding Hunter's custody. Chris requested Hunter be placed with him, but Krissa resisted until paternity was established. Eventually, Hunter's placement was ordered temporarily transferred to Chris.

After Hunter's adjudication as a child in need of assistance (CINA), Chris filed a motion seeking concurrent jurisdiction in order for the district court to determine Hunter's custody. He then filed a petition seeking custody and support in the district court. On September 21, 2006, the district court filed an order on Chris's petition in which it recognized that the juvenile court was still entertaining Hunter's custody and thus found "no reason to disturb its placement order." Somewhat ambiguously, the order then purported to "grant" Chris's request for temporary custody application, but also added: "Custody and visitations shall be as set out in the Delaware County juvenile case."

Hunter remained in Chris's custody for almost one-and-a-half years. Following an August 28, 2007 permanency hearing, despite the State and Iowa Department of Human Services's (DHS) recommendations to the contrary, the juvenile court removed Hunter's custody from Chris and ordered he be placed in Krissa's care. It found that while both Krissa and Chris were "appropriate placement options," the fact that Hunter's four half-siblings had been returned to Krissa's care tipped the scales in favor of reuniting him with them and their

mother.¹ Chris appeals from this order, asking this court to reverse the juvenile court and return Hunter's custody to him.²

Our scope of review in juvenile court proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

On appeal, Chris first asserts the juvenile court erroneously felt itself constrained by Iowa Code section 232.102(7) either to return the child to the mother's home, extend the "foster care," or terminate the CINA proceedings. Our review of the juvenile court's order does not bear this out and reveals that the court believed it had the ability to leave Hunter in Chris's care. By weighing the relative advantages and abilities of both parents, the court clearly expressed its consideration of Chris's home as a continuing placement option. Regardless, *In re S.V.*, 395 N.W.2d 666, 669 (Iowa Ct. App. 1986) establishes that Hunter indeed had two "homes" to which he could have been returned—his mother's and his father's. The court's ruling does not reflect a misapprehension as to this fact.

Chris next urges that the juvenile court improperly determined Hunter's interests are best served by returning his custody to his mother. Hunter's guardian ad litem prepared an extensive and insightful report that the court appeared to have relied on. That report recommended that custody of Hunter be returned to Krissa under the protective supervision of DHS. It noted that Krissa

¹ At the time of the permanency hearing, it was expected that the district court's custody hearing would take place in either October or November.

² The State took no position on appeal.

had been “compliant and successful with substance abuse treatment” and that she had been substance-free since July of 2006.³ The report also observed Krissa’s drive to better her and her children’s lives, her dedication to her employment, and her “positive” approach to discipline. Based on Krissa’s progress, the assessment of her parenting, her success in remaining free of drugs, and bonding with Hunter, we agree that Krissa would be an appropriate custodian for Hunter.

Next, the guardian ad litem’s report did find Chris’s home to be appropriate and reveals that Hunter has done very well in the care of his father and step-mother. However, it did note certain concerns about Hunter’s and Chris’s relationship. During in-home visits, the guardian ad litem observed Hunter interacting more with Chris’s wife than with Chris. Hunter related that when Chris gets home from work, he watches television or is on the computer, rather than spending time with Hunter. Hunter is very close to and affectionate with Krissa and his half-siblings that reside with her. They existed as a family unit from Hunter’s birth through his removal in early 2006. Conversely, Chris was not a part of Hunter’s life until 2004.

Considering the totality of the circumstances, we find the juvenile court order serves Hunter’s best interests. Hunter’s close relationship with Krissa and his half-siblings in her house is an important factor in this determination. Krissa continues to receive services from DHS as well as drug monitoring. Her progress in treatment and serious commitment to regaining custody of her

³ Although Krissa did have an apparent positive sweat patch test in June 2007, subsequent hair-stat and fingernail tests appear to have proved the sweat patch result a false positive.

children speaks well of her ability to care for Hunter and keep him in a safe environment. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests). Pursuant to the permanency order, Chris will enjoy "regular and consistent unsupervised visitation with Hunter." We therefore affirm the juvenile court's custody determination.

AFFIRMED.