IN THE COURT OF APPEALS OF IOWA

No. 8-694 / 08-1081
Filed September 17, 2008

IN THE INTEREST OF J.P.L. and J.S.L.,
Minor Children,

M.P., Intervenor,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, Judge.

Intervenor appeals from the permanency order returning two children to the care of their mother. **AFFIRMED.**

Bradley McCall of Brierly Charnetski, L.L.P., Grinnell, for appellant intervenor.

Fred Stiefel, Victor, for appellee father.

Jane Odland of Walker & Billingsley, Newton, for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael W. Mahaffey, County Attorney, and Rebecca Petig, Assistant County Attorney, for appellee State.

Terri Beukelman, Pella, for minor children.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

J.T. is the mother of J.P.L., who was born in 2000, and J.S.L., who was born in 2002. A temporary removal order was entered in April of 2007 and the children were placed in the custody of the Iowa Department of Human Services (DHS). After the State filed a petition alleging the children to be in need of assistance (CINA), the children's paternal grandmother, M.P., filed a motion to intervene. The children were subsequently adjudicated CINA and placed with their grandmother in the State of Nebraska. A permanency hearing was held in June of 2008, following which the juvenile court returned the children's care to their mother, over the objection of the intervenor. The intervenor appeals from this order.

Our review of a permanency order is de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Although we give weight to the juvenile court's findings of fact, especially its credibility determinations, we are not bound by them. Iowa R. App. P. 6.14(6)(*g*). The best interests of the children control our decision. Iowa R. App. P. 6.14(6)(*o*).

On appeal, the intervenor maintains that returning the children to their mother's care would subject them to adjudicatory harm and that the mother has had more than adequate time to establish her fitness as a parent. Finally, she claims the court improperly ignored "credible evidence" and "artificially limit[ed] and cut off" her ability to introduce evidence at the permanency hearing. Upon our de novo review of the record, we affirm the juvenile court's order returning the children to the care of their mother.

As an initial matter, Iowa courts recognize a rebuttable presumption that the best interests of a child are served by giving custody to a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 740 (Iowa 1983). At the hearing, both the DHS and the children's attorney/guardian ad litem recommended the children be returned to the care of their mother. Social worker Lori Devilder testified that she held no safety concerns regarding the mother's care of the children, that the mother was meeting their health needs, providing adequate food, clothing, and housing, and that she had been "very cooperative" with services and treatment. She speculated that the mother would continue to progress with services in the future. In-home service provider Beth Van Nevel-Clark similarly opined that the children could be safely returned to the mother's care. She found no safety or health concerns in the home. The CASA volunteer, Bonnie Tozer, in a detailed report to the court, summarized numerous deficiencies of the mother, and recommended the children remain in the care of the paternal grandparents. The district court found it was not in the best interests of the children to remain out of the home as reunification efforts continued.

Based on the strength of these observations and recommendations of these various service providers, we believe the juvenile court properly returned the children to their mother's care. As a protective measure, DHS retained supervisory control, and the mother was to follow "the terms and conditions prescribed to assure the proper care and protection of the children." While the intervenor certainly appears to have provided excellent care to the children, that is not determinative as to the children's placement. "In determining whether there is clear and convincing evidence that the children cannot be returned to the

care of their mother, we are not to engage in a comparison of the mother's home with the foster home." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Furthermore, we find no error in the court's decision to place a "time limit" on the permanency hearing. First, because the intervenor made no offer of proof as to the additional evidence she would have sought to introduce, we could conclude she cannot establish prejudice. *See* Iowa R. Evid. 5.103(*a*)(2) (offer of proof necessary to preserve error on ruling excluding evidence). Regardless, from our review of the record, we note that the intervenor was allowed to call a number of witnesses, including herself, and to introduce substantial evidence. Her position appears to have been presented and argued sufficiently for the court to have been fully apprised of it. Because the juvenile court holds the authority to exercise reasonable control over the presentation of evidence, so as "to avoid needless consumption of time," *see* Iowa R. Evid. 5.611(*a*), we are unable to find any abuse of discretion.

Appreciative of the concerns of the intervenor-grandmother, based on the danger these children have been exposed to in the past, we nonetheless affirm the decision of the district court to return the children to their mother. We emphasize those portions of the juvenile court order placing expectations on the mother with the continued involvement of DHS to assure the safety of the children. *See 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).

AFFIRMED.