

IN THE COURT OF APPEALS OF IOWA

No. 9-515 / 09-0730
Filed July 22, 2009

**IN THE INTEREST OF S.A., J.P., and C.A.,
Minor Children,**

**T.L.A., JR., Father,
Appellant.**

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

A father appeals from the permanency review order that placed his two children with their mother. **AFFIRMED.**

Dani L. Eisentrager of Eisentrager Law Office, Eagle Grove, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Patrick Chambers, County Attorney, for appellee.

Ryan Tang, Cedar Rapids, for mother.

Justin Deppe, Jewell, and J. Conroy, Waterloo, attorneys and guardians ad litem for minor children.

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

SACKETT, C.J.

A father appeals from the permanency review order that placed his two children with their mother.¹ He contends it is not in the children's best interests to be returned to their mother's care. We affirm.

Our review of a permanency order is de novo. See *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). We give weight to the juvenile court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g) (2009). Iowa Code section 232.104(5) provides:

Subsequent to the entry of a permanency order . . . the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

Iowa Code § 232.104(5). Moreover,

[o]ur responsibility in a modification of a permanency order is to look solely at the best interests of the child for whom the permanency order was previously entered. *Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the child and their needs.*

In re A.S.T., 508 N.W.2d 735, 737 (Iowa Ct. App. 1993) (emphasis added).

At the time of the December 1, 2008 permanency review order, the children were in the care of their paternal grandparents. The court continued placement of the children for up to six months, during which the parties were

¹ The mother has three children: an older son by another father and two younger daughters by the father who appealed in this case. Prior to the most recent modification of permanency, all three children were in the care of the girls' paternal grandparents. The father of the boy did not appeal.

required to develop and implement a plan of transition to return the children to their mother's custody with a schedule of visitation for the fathers. This court affirmed on the father's appeal. *In re S.A.*, No. 08-1970 (Iowa Ct. App. Feb. 4, 2009).

On April 23, 2009, the court held a permanency review hearing and filed its order the same day. The court found, in relevant part:

[The father] is the father only of [the two girls]. There is no doubt that he loves his children and is bonded to them. However, the Court has previously noted the father's mental health and emotional problems. He has a previous conviction for Child Endangerment on [the mother's son]; he has a previous conviction of Domestic Abuse Assault on his own mother; he has a history of daily panic attacks; he displayed an uncontrolled temper at the last court hearing; and since the last court hearing, he has incurred a conviction for contempt of court on a no-contact order protecting the mother. He is not working now and has only worked sporadically for some time. He is residing with his girlfriend and her children and is basically living off of them. Because he is the father of only the girls, placement of them with him would result in separating these three children from each other.

....

The mother has her faults, and the children certainly continue to be children in need of assistance. However, the evidence shows that the mother has been very cooperative with DHS, that the extended visit has gone acceptably well, and that the mother has substantially complied with all expectations placed upon her.

Based on the foregoing, the Court finds that it is now time to return custody of the children to the mother under the protective supervision of the Iowa Department of Human Services with appropriate counseling, treatment, and services continuing to be provided. The Court acknowledges the recommendations of the guardian ad litem that the Court simply extend the home visit. However, the problem with this approach is that the extended visit could be terminated by the Department at any time without a determination being made by the Court that the removal is necessary. These children have been bounced around enough. If these children should ever need to be removed from the mother's custody, it should only happen after a court has examined the

evidence and concluded that continued placement in the mother's home would be contrary to the children's welfare.

. . . .
Based upon the foregoing, the Court finds that it would be in the best interest of the children to modify the permanency order previously entered and to instead enter an order pursuant to Iowa Code section 232.104(2)(a) returning the children home to the custody of the mother under the protective supervision of the Iowa Department of Human Services.

The court finds that the Department of Human Services has made reasonable efforts to attain the permanency goal as shown by the order entered herein. The Court now finds that it would be in the best interest of the children to modify the previous order as set forth herein.

From our de novo review of the record, the court's findings quoted above are supported by clear and convincing evidence. In the current appeal, the father makes basically the same arguments he raised in his appeal from the December 2008 permanency review order. There have been no substantial changes in the father's situation. The children could not be returned to his care. It is clear the parents cannot get along and the children say things to each parent about the other that they believe that parent wants to hear. At times, unfortunately, these comments have led to unfounded reports of abuse. These reports do not affect our resolution of this appeal. The court ordered, and the department complied with the order to reunify the children with their mother. Given the circumstances in the record before us, and focusing primarily on the children's interests, we agree with the court that returning the children to their mother under the protective supervision of the department is in their best interests. We affirm the order of the court that modified its previous permanency review order and placed all three children with their mother.

AFFIRMED.