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IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR COUNTY

IN THE MATTER OF THE CUSTODY  
OF Amie , DOB 01/ /88,

Cause No.

Father

Petitioner,

-vs-

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT

Grandmother and Mother

Respondents.

IN THE MATTER OF THE  
GUARDIANSHIP OF AMIE  
a Minor Child.

Probate No.

In Probate No.

the natural father of Amie , seeks to set aside an ex parte order dated July 12, 1988, appointing Amie's maternal grandmother as Amie's guardian.

Father seeks an order of the Court granting to him the custody of Amie. These two proceedings were, by consent of the parties, consolidated for trial.

From the evidence, the Court makes the following:

FINDINGS OF FACT

The father (Father) , age 26, and the mother (Mother) , age 26, are the parents of Amie . Although they lived together for a time, Father and Mother were never formally married. Amie was born on January , 1988, and resided with Father and Mother until February, 1988, at which time Father entered the penal system upon conviction for a drug charge. Father readily admits that prior to entering prison he had a drug and alcohol problem and it appears from the evidence that Mother also has an alcohol problem and possibly a drug problem.

When Amie was brought home from the hospital, her mother's mother, Grandmother , assisted with the care of the child including giving baths and washing the child's clothes. It is apparent that either Mother was unable or did not care to provide parenting skills for Amie. Grandmother began to take over more

and more of the care of Amie, especially after Father went to prison. Father was released on parole in June, 1988, and returned to live with Mother and Amie for a short time. Mother moved out and Amie resided with Grandmother .

Because of concern for obtaining medical services for Amie, Grandmother and Mother decided it would be appropriate if Grandmother was appointed guardian for Amie. This was done on Mother 's application by a court order dated July 12, 1988. Notice of this application was not given to Father and he was unaware of these proceedings until about a month after the court order.

While Father was in prison from February to June, 1988, he obtained his G.E.D., attended A.A. classes, N.A. classes and counseling. He has not indulged in alcohol or drugs since entering prison and he is a nonsmoker. Father also had a weight problem which he has now controlled. After release from prison, he obtained employment for a short time with Cargill Seed Corn Company in , Iowa. Thereafter, in January or February, 1989, Father became employed at I.B.P. in , Iowa, and remains employed to date. Father was promoted to Quality Control Inspector and is reported to be very reliable and has a good work record. Father underwent counseling with Alcohol & Drug Dependency Services and successfully completed outpatient treatment on June 2, 1989.

As stated, Father was on parole after his release from prison. His parole officers reported that he is an exceptional case and has been very successful on parole.

Testimony from Doctor Carroll and from Grandmother corroborates that Father has changed since his release from prison and he is a far better person than before his prison experience.

Father purchased a home on contract which will be paid off by June 15, 1991. He lives in the home with his mother. The home was somewhat run down, but Father has completed substantial repairs, painting and remodeling of the home.

Father has maintained constant contact with Amie. For awhile, the contact was in the home of Grandmother on a frequent basis, but eventually the visits consist of seven hours every Sunday. He has not had an overnight visit.

If Father is granted custody, he would spend time each day with Amie until 2:30 p.m. when he leaves for work on the second shift at I.B.P. Father's mother would care for Amie when Father is at work. His mother presently does babysitting for other people.

Father does not at the present time pay child support for Amie. He has, since his release from prison, paid off the hospital bill that was owing for Amie's birth. Father has offered to pay for Amie's babysitter or place funds into an account for Amie. He has a \$50,000 life insurance policy naming Amie as the beneficiary.

Amie presently lives with her grandmother, who is 47 years of age and has been divorced for ten years. They live in a two-bedroom apartment. In addition to Grandmother and Amie, Amie's mother stays at the apartment two or three nights a week and also Grandmother's niece stays at the apartment during the week except on weekends.

Grandmother has been employed at Corporation for 24 years. She works the day shift and she takes Amie to a licensed day care center at about 6:45 a.m. and picks her up at 3:45 p.m. Grandmother otherwise provides for the daily care of Amie.

Amie's mother has very little to do with Amie and does not take part to any great extent in parenting and she is making no claim for the custody of Amie.

Grandmother testified that she gets along reasonably well with Father and that he has a good relationship with Amie. While Amie showed some reluctance to go with Father for a time, it no longer presents a problem and Amie is ready and willing to go with Father when he comes to get her. Grandmother also testified that she thinks it is in the best interest of Amie that she stay with her for now. She does not feel secure enough to let Father

have Amie overnight and it is obvious to the Court that Grandmother has provided good care for Amie, loves her very much, and is very protective of her.

From these facts, the Court makes the following:

#### CONCLUSIONS OF LAW

Since the parties agreed that the application to set aside the guardianship proceedings could be combined with Father's application for custody, this matter is essentially a custody hearing. Father, in his application to set aside the guardianship, raised constitutional issues concerning his lack of receiving notice of the proceedings. This same issue was raised in Patten v. Patrick, 276 NW2d 390 (Iowa 1979), where the Court held that since Section 633.37 essentially gives Father a right to a subsequent evidentiary hearing on the guardianship appointment, this sufficiently satisfies the due process requirements.

Although in this case Father proceeded first in presenting evidence, it appears from the holding in Matter of Guardianship of Stewart, 369 NW2d 820, 823 (Iowa 1985), the burden of proof is on Grandmother. This is true because there is a rebuttable presumption in Section 633.559 of the Code favoring the natural parents. The guardian has the burden to establish that the best interest of the child requires the continuation of the guardianship in view of the rebuttable presumption favoring natural parents. In Re Guardianship of Sams, 256 NW2d 570 (Iowa 1977). Of course, the determining factor is still the best interest of the child.

In this case there is no question that Grandmother is a caring and loving grandmother who has provided well for Amie's physical and emotional needs. A continuation of the guardianship would provide Amie continuity and stability in a familiar setting. However, Amie has had sufficient contact with Father that it is rather apparent from even Grandmother's testimony that a bond has developed between Father and Amie. Father has had his share of problems in the past, but the Court believes the

evidence demonstrates that he has turned himself around and has become a productive member of the community. The evidence further demonstrates that Father is devoted to his daughter and has taken extraordinary steps to keep in contact with her, even to the point of sometimes becoming a "pest."

The law recognizes that it is to a child's advantage and benefit to develop a strong father-daughter relationship.

Because of the rebuttable presumption and because Father has now demonstrated that he is a fit father, the Court concludes that the guardianship should no longer be continued.

Likewise, for the same reasons, the Court concludes that in applying the factors set forth in In Re Marriage of Winter, 223 NW2d 165 (Iowa 1974), custody of Amie should be placed with Father .

Because Grandmother has had much of the care of Amie for her short life and has established a substantial relationship with her, the Court also concludes that it is appropriate that Grandmother be granted reasonable grandparent visitation rights of not less than one weekend a month from 10 a.m. Saturday to 6 p.m. Sunday to be exercised on the first weekend of each month. [See Section 598.35(6).]

Judgment in accordance with the foregoing Findings of Fact and Conclusions of Law is hereby entered. Costs are assessed against Father .

DATED this 7<sup>th</sup> day of February, 1990.

  
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JUDGE, JUDICIAL DISTRICT OF IOWA

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