

IN THE COURT OF APPEALS OF IOWA

No. 0-151 / 10-0153
Filed March 24, 2010

**IN THE INTEREST OF I.R. and L.B.-R.,
Minor Children,**

**L.B.-R., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson,
District Associate Judge.

A mother appeals a juvenile court permanency order that followed an order
waiving the requirement of reasonable efforts. **APPEAL DISMISSED.**

Phil R. Caniglia, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General,
Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for
appellee State.

Maura Goaley, Council Bluffs, guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

Lacey is the mother of two children, Liliana and Isaiah, who were both under the age of four at all times relevant to this appeal. On June 4, 2009, the State filed a petition alleging Liliana and Isaiah to be children in need of assistance (CINA). On July 17, 2009, the State filed a motion to waive reasonable efforts¹ to help Lacey meet requirements for reunification with her children pursuant to Iowa Code section 232.102(12)(b) (2009). The juvenile court held a hearing on both matters.

The juvenile court entered an order on October 14, 2009, adjudicating Liliana and Isaiah to be children in need of assistance and granting the State's motion to waive reasonable efforts. Lacey filed an application for interlocutory appeal from the order waiving reasonable efforts, which the Iowa Supreme Court denied November 12, 2009.

Because the juvenile court waived the State's obligation to expend reasonable efforts on reunification, it scheduled the dispositional hearing on the CINA adjudication under Iowa Code section 232.99 in conjunction with the permanency hearing under Iowa Code section 232.104(1)(a)(2). After the hearing, which took place December 1, 2009, the court issued its combined CINA disposition and permanency order, providing that the care of the children remain with the Iowa Department of Human Services (DHS) for continued placement in family foster care.

Lacey now appeals from the juvenile court's permanency order, arguing the State failed to present clear and convincing evidence in the adjudicatory/reasonable efforts hearing that services would not correct the condition that led to the alleged abuse of the

¹ The Iowa Department of Human Services has an obligation to make reasonable efforts to reunite parents with children. Iowa Code § 232.102(7) (2009). However, the juvenile court may waive reasonable efforts when aggravated circumstances exist. Iowa Code § 232.102(12).

children within a reasonable time.² She seeks a review of the decision waiving reasonable efforts through an appeal of the original order waiving reasonable efforts or, in the alternative, through an appeal of the permanency order.³

Final orders are appealable as a matter of right. Iowa R. App. P. 6.101(1) (2010). In contrast, if the ruling or decision is interlocutory, we lack jurisdiction unless permission to appeal is granted. *In re T.R.*, 705 N.W.2d 6, 10 (2005).

A final order is one that conclusively adjudicates the rights of the parties. *Rowen v. LeMars Mut. Inc.*, 357 N.W.2d 579, 581 (Iowa 1984). “A ruling is not final when the trial court intends to do something further to signify its final adjudication of the case. Furthermore, a juvenile court order is not final unless it disposes of all the issues.” *T.R.*, 705 N.W.2d at 10 (quoting *In re C.S.*, 516 N.W.2d 851, 857 (Iowa 1994)). “[A]n interlocutory order is one that ‘directs an inquiry into a matter of fact preparatory to a final decision.’” *Id.* (quoting *In re Long*, 313 N.W.2d 473, 476 (Iowa 1981)).

Lacey argues that an order waiving reasonable efforts is a final order from which she should have been allowed to appeal as a matter of right. In the alternative, she argues that the permanency order is a final order from which she may appeal as a matter of right. We disagree with both contentions.

We conclude the juvenile court’s order waiving reasonable efforts is not an appealable final order. It did not dispose of all the issues in this case, nor did it conclusively adjudicate the rights of the parties. Under Iowa Code section 232.111(2)(a)(2), the county attorney is required to file a petition for termination of

² Lacey’s rights are the only rights at issue on appeal. Lacey does not challenge the court’s adjudication of Liliana and Isaiah as children in need of assistance.

³ Lacey does not appeal from the dispositional portion of the CINA disposition permanency order; therefore, we decline to address its appealability.

parental rights once reasonable efforts are waived, and so it is contemplated that a subsequent hearing will be held. Where termination proceedings are directed, there can be no “final” order until after the termination trial. *In re W.D., III*, 562 N.W.2d 183, 186 (Iowa 1997). To the extent Lacey attempts to appeal from the order waiving reasonable efforts, we find her appeal to be interlocutory, and the supreme court previously denied her application for interlocutory appeal. We therefore lack jurisdiction to hear this issue. See *T.R.*, 705 N.W.2d at 10.

In the alternative, Lacey asserts that we have jurisdiction to consider her appeal because it was filed after the permanency order, which she claims is a final order. The State did not argue that the permanency order was appealable, but merely “assume[d]” that it was for purposes of this appeal. We disagree with Lacey’s contention and the State’s assumption. We find that because this permanency order is not “finally decisive of the case,” it is not a final, appealable order. See *W.D.*, 562 N.W.2d at 186.⁴ This lack of finality renders the permanency order an interlocutory order, which may be appealed only after a final judgment or after the grant of an application for interlocutory review of the order.

⁴ Apparently, the State assumes Lacey can appeal from the permanency order because the juvenile court, in the permanency order, declined to direct the State “what, if any, petitions should be filed.” Case law establishes that a permanency order directing the filing of a petition for termination of parental rights is an interlocutory order for purposes of appeal. See, e.g., *T.R.*, 705 N.W.2d at 11. The State relies on this case law to assume that when a permanency order does not direct the filing of a petition for termination of parental rights, it is appealable. We disagree. Pursuant to Iowa Code section 232.111(2)(a)(2), the county attorney is required to file a petition for termination of parental rights in this case, making the court’s instruction to the county attorney to file a petition unnecessary. We find none of the conditions listed in Iowa Code section 232.111(2)(b) exist.

We also decline to grant interlocutory review from the permanency order.⁵ Refusing to allow this appeal as interlocutory promotes judicial economy and efficiency, gives our court the benefit of the juvenile court's careful consideration of the issues, and saves the children from being subjected to the uncertainties of piecemeal litigation. See *T.R.*, 705 N.W.2d at 12.

For the reasons stated above, we have no jurisdiction to review the order waiving reasonable efforts, and we decline to grant interlocutory review of the permanency order. The issue of whether the juvenile court should have waived reasonable efforts, if properly preserved, must await an appeal from a final order terminating parental rights. Accordingly, we dismiss the appeal.

APPEAL DISMISSED.

⁵ Pursuant to Iowa Rule of Appellate Procedure 6.108, we treat Lacey's appeal from an interlocutory order as an application for interlocutory appeal.