

IN THE COURT OF APPEALS OF IOWA

No. 0-523 / 10-0914
Filed July 28, 2010

**IN THE INTEREST OF J.D.,
Minor Child,**

**J.M.D., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jamie A. Splinter of Splinter Law Office, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Sara Stork Meyer, Dubuque, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Jody, the mother, appeals from a juvenile court order terminating her parental rights to her son, J.D., under Iowa Code section 232.116(1)(h) (2009).¹ On appeal, Jody argues (1) the juvenile court erred in denying her motion for a six-month continuance and (2) she did not receive reasonable efforts aimed at reunification. Because we agree with the juvenile court that a six-month continuance would not have enabled reunification and also find that Jody did receive reasonable efforts, we affirm.

I. Background Facts and Proceedings

Jody gave birth to J.D. in July 2009. The day after his birth, the Iowa Department of Human Services (DHS) applied to have J.D. removed from Jody's custody citing concerns that Jody had had her parental rights to four other children terminated as well as a fifth child having been voluntarily placed with a relative for adoption. DHS also noted that Jody continues to struggle with various mental health issues. The juvenile court granted the application and J.D. was placed in a foster care home. J.D. was subsequently adjudicated as a child in need of assistance under Iowa Code section 232.2(6)(n). J.D. has been living with the same foster parents since his release from the hospital in August 2009.

Jody has a significant history of mental health issues. For the last thirteen years, she has had on-and-off therapy for diagnoses of major depressive disorder with psychotic features, bipolar II disorder, borderline personality disorder, borderline intellectual functioning, and dissociative identity type of traits.

¹ The father voluntarily consented to the termination of his parental rights, and his rights are not at issue in the present appeal.

Jody has also been hospitalized on several occasions due to her diagnoses and suicidal tendencies.

Following J.D.'s removal, DHS provided a number of services. Jody has received mental health services; case management; visitations through Families First Counseling (fully and partially supervised); referrals to providers of food, furniture, clothing, and other items Jody needed for both herself and J.D.; an application for housing; and a referral to the Wellness Center. In addition, Jody had service providers from two organizations who assisted her with daily living issues, such as transportation, budgeting, cleaning, and cooking.

By December 2009, Jody was living with her aunt and uncle in their home. The in-home inspection revealed several issues with this home, which were remedied. The home was then determined to be an appropriate place for J.D. While at this location, Jody was successful in obtaining partially supervised visits lasting up to six hours. The visits went well. In addition, Jody was consistently attending her appointments during this time. Her therapist stated that Jody's mental health was the best he had seen in the thirteen years he had been working with her.

On December 15, 2009, the juvenile court entered a dispositional order requiring, among other things, for Jody to "obtain her own residence that is appropriate for [J.D.]." Jody appealed the order on the grounds that the juvenile court should not require independent living as a barrier to reunification. We agreed, and on March 24, 2010, we struck the provision requiring Jody to obtain independent housing as a condition of reunification. *In re J.D.*, No. 10-0027, (Iowa Ct. App. Mar. 24, 2010).

However, in early February 2010, the stability Jody gained while at her aunt and uncle's home began to unravel when she moved out as the result of a fight with her aunt. From February to April, Jody moved a total of four times. Jody first moved into her boyfriend's apartment. While staying with her boyfriend, Jody's attendance at therapy, her visits with J.D., and other appointments with her other service providers declined. Jody stayed at her boyfriend's apartment for less than a month, at which time she reported to the police that he had assaulted her. A domestic violence organization assisting Jody following this incident placed her at the Canfield Hotel, where Jody stayed for only a short period of time. Jody scheduled no visitation appointments with J.D. while she was at the Canfield Hotel.

After leaving the Canfield Hotel, Jody went to live with her grandmother, grandfather, and mother. While Jody was there, Jody would not allow a service provider to perform an in-home inspection. Accordingly, at-home visits with J.D. were not permitted at this location. During this time, Jody consistently attended fully supervised visits with J.D. that were held at the Families First offices. However, the service providers were concerned that Jody's grandparents and mother were taking advantage of Jody financially² and that the environment was consequently unsupportive and inappropriate for Jody.

In late March 2010, Jody moved out of her grandparents' home into a one-bedroom apartment. Jody allowed service providers to perform an in-home inspection of her apartment, after which they determined the apartment to be an appropriate residence for J.D., but noted that Jody needed to get a crib and other

² Jody receives disability benefits because of her mental health condition.

items necessary for J.D.'s care. One of Jody's service providers gave Jody referrals to different organizations that might help Jody to obtain these items, but Jody never followed up with these organizations and never obtained the necessary items. When Jody first moved into the apartment, she lived there alone, but subsequently allowed two adults and five children to move into the apartment, which undermined its appropriateness for reunification with J.D.

While living in this apartment, Jody initially continued to miss her therapy appointments, but eventually began attending them more regularly. Jody also again became inconsistent in attending her visits with J.D., as well as her other appointments. Jody claimed she missed appointments because her medications made her tired in the mornings and as a result of various injuries. Further, during the months of April and May, Jody sent several suicidal text messages to her service providers. Out of concern for her well-being, these service providers called emergency services on four occasions to perform welfare checks or to otherwise transport Jody to the hospital for admittance to its psychiatric ward. Toward the end of April and into early May 2010, Jody scheduled no appointments for visitation with J.D. Jody had her last visit with J.D. on May 6, 2010. As of that date Jody had attended fifty-two out of seventy-two scheduled visits.

On March 15, 2010, the juvenile court held a review hearing. At this time, the State requested that a permanency or termination hearing be set due to the child's age. On April 8, 2010, Jody moved for a six-month extension of the time period for reunification on the ground that her progress had been hindered by her

attempted compliance with the independent living requirement eliminated by our court. The juvenile court scheduled a hearing on both matters for May 13, 2010.

At the termination hearing, all of Jody's service providers were of the opinion that Jody could not provide long-term consistent care for J.D. The service providers identified a number of concerns they had that bore on Jody's ability to care for J.D. These included Jody's mental health status, her admitted failure to take all of her prescribed medications, her inability to meet her own personal care needs, her lack of outside support from friends or family members, her propensity to be taken advantage of by others, her recent self-reported use of marijuana while staying with her boyfriend,³ her inability to financially care for J.D., and her tendency to involve herself in inappropriate relationships.

The child's attorney also recommended that parental rights be terminated. Jody did not testify. The juvenile court noted that Jody "put her head down on counsel's table and appeared to sleep through most of the morning session [of the hearing]."

Jody's therapist testified at the hearing as a witness for Jody. He testified "there is a very good likelihood that [Jody] can restabilize" and care for J.D.

However, he acknowledged:

At this point she is very impaired if we look at 24/7 parenting with [J.D.]. In terms of – I think short periods of time, hours, maybe even days would probably be okay, with some supports. In terms of many days, weeks, months, I think there would be some major struggles.

The therapist further testified:

³ Jody told the provider that "it wouldn't matter because it wouldn't show up in a drug test."

Q. As Jody sits here today, can she parent her son, [J.D.]?

A. At this point in time, the likelihood is that she cannot for any consistent period of time.

Q. Then what are your recommendations as far as the services that are needed for her to parent? A. I would like to do a full reassessment of what she has and when she has it and how it's working and maybe either family team meeting or the team within the team, just go back to the drawing board and pull out all stops and what's available and what she needs and do a lot of wrap-around, especially during the late evening time which is very critical for Jody.

...

Q. Do you know what kind of time frames that you're talking about in order to rebuild her to where she was at or better?

A. Well, given the fact that the last three and a half months things have kind of broken down again, I would say six months plus to restore and rebuild to approximately October of '09 to February of 2010.

On May 19, 2010, the juvenile court rejected Jody's motion for a six-month extension, finding:

The Court believes a six-month extension in order to possibly get Jody back into a position where she can receive partially supervised visits is an unreasonable amount of time for [J.D.] to wait. This is especially true since the amount of time needed for sufficient progress to actually place [J.D.] in Jody's care would likely be much greater than six months, if ever. Given [J.D.'s] age, such an extension would be inconsistent with the statutory scheme of Chapter 232 regarding the time frames for establishing permanency.

The juvenile court further found Jody's parental rights to J.D. should be terminated pursuant to Iowa Code section 232.116(1)(h). Jody appeals.

II. Standard of Review

We review appeals from a termination order de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). "We give weight to the factual determinations of the

juvenile court but we are not bound by them.” *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).⁴

III. Analysis

On appeal, Jody does not challenge that this case meets the statutory grounds for termination or that termination was in the best interests of J.D. Rather, Jody argues that the juvenile court erred in denying her motion for a six-month extension and that she was not provided reasonable efforts geared toward reunification.

A. Six-Month Extension

In order to continue placement for an additional six months, the court must be able to make a determination that “the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” Iowa Code § 232.104(2)(b). As our court has noted:

Under some circumstances extensions could be appropriate. “The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home.”

In re A.A.G., 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (quoting *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. In re A.C. v. Iowa*, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988)).

On our review, we agree with the juvenile court that a six-month extension would not resolve the issues that necessitated removal. At the time of the

⁴ *In re P.L.* states that “the proper standard of review for all termination decisions should be de novo.” 778 N.W.2d at 40. We need not decide today whether a decision not to grant a six-month extension pursuant to Iowa Code section 232.104(2)(b) is considered a “termination decision” now subject to a de novo standard of review or whether the previously-applied abuse of discretion standard remains in effect. See *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). Under either standard, we conclude the juvenile court should be affirmed here.

hearing, both DHS and Jody's therapist had a number of concerns with regard to Jody's ability to successfully parent J.D. on a day-to-day basis. These concerns centered on Jody's significant mental health diagnoses. As Jody's therapist recognized, it would take "six months plus" for Jody to reach the level she was at when she was living with her aunt and uncle, which still would not be sufficient stability for reunification. Further, based on Jody's record over the past ten months, it is not at all clear that even if she returned to that level of functioning, she would be able to maintain it for any extended period of time. Accordingly, we affirm the order of the juvenile court denying Jody's motion for an extension of six months.

Jody also argues she should have received a six-month extension because she lost time while attempting to comply with the requirement that she obtain independent housing, a proviso we ultimately overturned on appeal. However, the record does not support Jody's argument. Even as her appeal was in progress, Jody continued to live with her uncle and aunt until she got in a fight with her aunt.

B. Reasonable Efforts

Jody also argues that she was not provided reasonable reunification efforts. When a child has been removed from a parent's care, the State has the responsibility to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(7); see also Iowa Code § 232.102(10)(a) (defining reasonable efforts). Although the State "has an obligation to make reasonable efforts toward reunification, . . . a parent has an equal obligation to demand other, different, or

additional services prior to a permanency or termination hearing.” *A.A.G.*, 708 N.W.2d at 91; *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). However, a parent’s complaint to a social worker that the services are deficient is not sufficient to preserve the issue for appellate review. *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). Parents making these complaints must bring them to the attention of the juvenile court “at the removal, when the case permanency plan is entered, or at later review hearings.” *Id.* If the parent fails to bring an objection to the juvenile court prior to the termination hearing, then the issue of whether the State provided reasonable efforts is not preserved for appellate review. *S.R.*, 600 N.W.2d at 65.

Upon our review of the record, we find the issue was not properly preserved for appellate review. Jody asserts this issue was preserved for appeal when she filed her appeal of the juvenile court’s order requiring her to obtain independent housing. However, that appeal did not object in any way to the services DHS provided, but rather involved the order of the district court requiring Jody to obtain independent housing. See *In re J.D.*, No. 10-0027, (Iowa Ct. App. Mar. 24, 2010). Additionally, in Jody’s motion for extension, Jody still made no allegation that DHS failed to provide reasonable services, but rather requested an extension on the grounds that her progress toward reunification was stunted because she had attempted to comply with the juvenile court’s order. Accordingly, we find this issue was not properly preserved for review.

Nonetheless, even if the issue were preserved, we find that Jody could not succeed on the merits.

[T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.

In re C.B., 611 N.W.2d 489, 493 (Iowa 2000) (citation omitted).

On appeal, Jody does not claim she requested services that were not received. Rather, she argues that DHS's services were unsupportive of her and that DHS hampered her progress by pushing her towards obtaining independent living although we found such a condition to be unnecessary. Jody's argument that DHS provided unsupportive services is based primarily upon criticism of the team meetings. However, it appears the team meetings were restructured to be more supportive of Jody. In any event, we cannot agree that what DHS provided fell short of "reasonable efforts" or that any deficiencies in the team meetings were the cause of Jody's being unable to have J.D. safely returned to her.

Jody's second point is also without merit because Jody's move out of her aunt and uncle's home in February 2010 cannot be attributed to DHS's preferences. While it is true DHS encouraged Jody to move into Julien Care in October 2009 and Julien Care was not a place where Jody could reunify with her child, this ultimately did not affect Jody's chances of reunification with J.D. Jody remained at Julien Care for only three days and then immediately returned to live with her aunt and uncle. Following her return, Jody continued to keep her visits and other appointments and thus her progress ultimately was not affected by this move. Jody's progress did not start to dissipate until after Jody voluntarily moved

out of her aunt and uncle's home in February 2010 and into an apartment with her boyfriend.

We also find, as did the juvenile court, that termination is in the best interests of J.D. The record shows that Jody is struggling to meet her own needs, let alone demonstrating the ability to meet the physical, mental, and emotional needs of J.D. See *P.L.*, 778 N.W.2d at 41. Jody has serious mental health issues; has not been taking her medications; does not have suitable housing for J.D.; has sent alarming and potentially suicidal messages to service providers; and has recently used marijuana (and talked about that use in defiant terms). A mother who appears to fall asleep on the morning of the termination hearing, as observed by the juvenile court, is probably going to be a poor candidate to provide the around-the-clock support needed by a young child. J.D. has been out of his mother's custody for his entire life and needs permanency. For the foregoing reasons, we affirm the juvenile court's order terminating Jody's parental rights.

AFFIRMED.