

**IN THE COURT OF APPEALS OF IOWA**

No. 1-173 / 11-0193  
Filed March 30, 2011

**IN THE INTEREST OF R.W., C.W.,  
L.W., C.W. and S.W.,  
Minor Children,**

**L.A.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Cerro Gordo County, Gregg Rosenblatt, District Associate Judge.

A mother appeals from a permanency order granting an additional six months for her to work toward reunification with her children. The order denied her requests to return two children to her custody immediately and to return a third child to foster care in Iowa. **AFFIRMED.**

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant mother.

Robert S. Swanson of Robert Swanson Law Firm, P.C., Clear Lake, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Paul L. Martin, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee State.

Mark A. Young of Young Law Office, Mason City, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Lisa and Raymond are the parents of Rebecca, Charlize, Liberty, Chelsea, and Sydney, ages eleven, nine, six, four, and two, respectively, at the time of the filing of the order on appeal. All of the children have been identified to have “very definite special needs.” On July 28, 2009, the State filed a petition alleging all five children were in need of assistance (CINA). At an adjudicatory hearing on August 13, 2009, the parents consented to adjudication of the children as CINA pursuant to Iowa Code section 232.2(6)(g) (2009) (failure to exercise a minimal degree of care in supplying food, clothing, or shelter). The children remained in the care of their parents with supervision by the Iowa Department of Human Services (DHS).

In a review order filed December 15, 2009, the juvenile court continued custody of all five children with their parents but approved voluntary temporary placement of the children with relatives because of the inadequate condition of the parents’ home. A case worker sent to report on the condition of the home found dog feces throughout the house, dirty dishes piled in the kitchen, and old pieces of food on the floor. A family support worker described the condition of the home as “hazardous to the family’s health and unsafe for the children.”

On January 1, 2010, the five children were placed in relative care, and by May 20, 2010, the children resided in the homes of four different relatives out of state.<sup>1</sup> No record checks or home studies were conducted on the individuals

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<sup>1</sup> Though DHS and the State allege the decision to place the children in relative care was voluntary, Lisa disagrees. We decline to make a finding in this regard.

charged with caring for the children. At the time the children were placed in relative care, they had very little, if any, clothing and all of the children had head lice. Two of the children had urinary tract infections.

The children made great progress in their relative placements. In a review order filed May 24, 2010, the juvenile court placed the children in the temporary care, custody, and control of DHS for purposes of placement with relatives or in family foster care. On May 28, 2010, Liberty was returned to Iowa and placed in family foster care.

By late July 2010, Lisa and Raymond were no longer living together, and Raymond was planning to file for divorce.<sup>2</sup> Lisa took significant steps in the months that followed. She obtained her own apartment and found employment. She benefitted from mental health therapy and medication to manage her issues with depression.

Also during this time, Charlize and Chelsea were returned to Iowa and placed in foster care together. Lisa enjoyed active visitation with Chelsea, Liberty, and Charlize. Lisa enjoyed unsupervised visits with Liberty and began to have unsupervised overnight visits with Liberty in October. On October 27, 2010, Lisa began unsupervised visits with Charlize and Chelsea. She began unsupervised overnight visits with Charlize and Chelsea in late November 2010.

Rebecca and Sydney remained in relative placement in separate homes out of state. Lisa rarely exercised visitation with Rebecca and Sydney, due in part to the financial burden of visiting the children out of state. However, both girls were reportedly integrated into their relatives' homes and made good

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<sup>2</sup> Raymond's rights are not at issue on appeal.

progress. As of November 24, 2010, Lisa had only seen Rebecca once since her removal, though she had weekly phone contact with her. As of February 1, 2011, Lisa had only seen Sydney once since her removal.

A review and permanency hearing was held January 27, 2011, when the children had been placed out of their parents' custody for about a year. At the time of the hearing, DHS recommended that the children remain in their current custody with DHS or a relative. Lisa requested that Charlize and Chelsea be returned to her care. She also requested that Sydney be moved to foster care in Iowa to facilitate visits. She asked that Rebecca remain in her relative placement in South Dakota.

The juvenile court entered a permanency order on February 1, 2011, granting another six months for the parents to work toward reunification and concluding "that continued out-of-home placement for these children is necessary at this time to protect them from harm as specified in Section 232.2(6)." Review was scheduled for April 2011. The court therefore ordered that Charlize, Liberty, and Chelsea remain in the custody of DHS in their foster placements and that Rebecca and Sydney remain in the custody of their relative placements out of Iowa.

Lisa appeals from the juvenile court's order, arguing: (1) DHS's placement of all five children outside the state of Iowa was illegal and its current placement of Sydney is illegal; and (2) the court erred in determining Chelsea and Charlize could not be returned to her custody.

## **II. Out of State Placement**

Lisa asserts the district court erred in initially placing and in continuing the placement of Sydney out of state with relatives without first completing record checks or home studies on the individuals caring for her children. Lisa never presented this issue to the juvenile court. In fact, Lisa asserted at the permanency hearing that she wanted Rebecca to remain in her current placement out-of-state. Because Lisa did not present this issue to the juvenile court, we decline to rule on it now. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (finding issues must be presented to and ruled upon by the district court in order to preserve error for appeal).

## **III. Permanency for Chelsea and Charlize**

Lisa argues the juvenile court erred in determining Chelsea and Charlize could not be returned to her custody following the permanency hearing. After a de novo review of the record, we agree with the juvenile court's finding that an additional six months to work toward reunification is in the children's best interests given the complexity of this case and each child's special needs.

In reaching this conclusion, we acknowledge that Lisa has made great improvements during the pendency of these proceedings. Jennifer White, the DHS caseworker assigned to work with Lisa, testified that Lisa's home was appropriate for children. She testified Lisa had maintained steady employment and had been successfully managing her depression and mental health issues for several months. White also testified that Lisa's parenting skills had not caused safety concerns or reasons for removal during the three to four months in which she had exercised extensive unsupervised visits. White acknowledged

that Lisa “has demonstrated motivation and effort to have the girls returned to her care, and has made progress toward her goals.” Additionally, the guardian ad litem recognized Lisa was “doing very well” and had made “substantial progress.” He expressed a desire to congratulate Lisa because she was “a different person than [he] saw two years ago.” The district court judge agreed that he was “very impressed” with Lisa and recognized that reunification of Charlize and Chelsea with their mother “may be likely in the near future.”

However, the juvenile court found that returning the children to Lisa’s home immediately would be

contrary to their welfare because the children . . . are struggling with transitions between respective homes, healthy and consistent parenting routines need to be established by both parents . . . and [Lisa] needs to continue to work on consistency in her expectations for the children and in disciplinary techniques.

Similarly, White recommended that Chelsea and Charlize remain in the custody of DHS. White testified that Chelsea and Charlize were struggling in their foster homes and at school since overnight visits started with Lisa and Raymond.<sup>3</sup> White also testified that Lisa needed “to continue to make more progress in creating healthy boundaries for the kids” and “to show more improvement in having strict routines for the girls.” White expressed concern that because Lisa “has a lot of anxiety,” she could become overwhelmed and her home could “quickly return to the chaotic environment that it was before they came into foster care and relative care.” She also stated Lisa’s anxiety could cause her to fail to closely monitor the children, resulting in potential safety issues. White stated in her report to the court that although Lisa had shown improvement, she would

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<sup>3</sup> Raymond and Lisa alternated weekend visits with Chelsea and Charlize.

“need to continue to demonstrate progress with enforcing routines and limits in her home” before her children could be returned to her care.

White recognized that it may be appropriate to return one or more of the children to Lisa within three months and specifically requested a review hearing in three months for that purpose. The family’s reunification will be reviewed in April. The juvenile court recognized that Lisa was very close to having one or two children returned to her care. The court further stated this situation was a “delicate balancing act for the court because we don’t want to [return the children] too fast or too abruptly because then if it doesn’t work, it kind of sets you back even further than you were already.” We trust the juvenile court is allowing for transition of the children to Lisa’s care in a manner best for the children, as we believe that Lisa has demonstrated a consistent ability to provide a safe environment for the children. Lisa acknowledged that she would continue to need support from DHS. We believe this support is sufficient to allow Lisa to continue to develop routines and disciplinary techniques while increasing her parenting time of Chelsea and Charlize. We affirm the district court’s grant of additional time to ensure the children’s safe transition to the care of their mother.

**AFFIRMED.**