IN THE COURT OF APPEALS OF IOWA

No. 1-231 / 11-0232
Filed April 27, 2011

IN THE INTEREST OF J.B.,
Minor Child,

K.B., Mother,
Appellant,

W.M.B., Father,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother and father appeal from the termination of their parental rights to their son. **REVERSED**.

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant mother.

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

Joan M. Black, Iowa City, attorney and guardian ad litem for minor child.

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

TABOR, J.

These appeals—filed by a mother and father whose parental rights to their seven-year-old son were terminated—come to us following an unusual procedural history. The juvenile court adjudicated J.B. as a child in need of assistance on October 15, 2008, based on the parents' failure to provide an adequate degree of supervision or appropriate living conditions under Iowa Code sections 232.2(6)(c)(2) and (g) (2009). The Department of Human Services initially placed J.B. with his maternal grandmother while his two younger brothers remained in the care of his parents.[1]

The State filed a petition to terminate parental rights to J.B. on August 9, 2010. On October 27, 2010, the juvenile court denied the petition, concluding there was not clear and convincing evidence to justify termination, and granted the parents six months to work toward reunification. On November 9, 2010, the State filed a motion requesting reconsideration of the original ruling and a reopening of the record, citing Iowa Rule of Civil Procedure 1.904(2).

On November 10, 2010—at 1:09 p.m.—the guardian ad litem filed a notice of appeal from the juvenile court's order dismissing the termination petition entered on October 27, 2010. Also on November 10, 2010—at 1:19 p.m.—the juvenile court filed an order granting the State's motion to "reconsider and reopen the record" on the issue of termination. In that order granting the State's motion, the juvenile court set a hearing date of December 1, 2010, to consider additional evidence. The guardian ad litem voluntarily dismissed its appeal on November

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[1] The juvenile court terminated their parental rights to a daughter, H.B., in August 2009.

16, 2010. The court heard evidence on both December 1 and December 8, 2010. The Clerk of the Iowa Supreme Court issued the procedendo officially ending the guardian ad litem's appeal on December 10, 2010. The juvenile court issued an order terminating parental rights on January 28, 2011.

The parents both appeal from the termination order. They assert that the juvenile court erred in granting the State's motion to reconsider, in taking additional evidence, in finding that their son could not be returned home, and in finding that termination was in the child's best interest.

In our de novo review, we find that the district court did not have authority to reopen the record and reconsider its denial of termination based on the State's November 9, 2010 motion.[2] *See In re J.J.S.*, 628 N.W.2d 25, 29-30 (Iowa Ct. App. 2001). The State's motion requested that the court conduct a hearing pursuant to rule 1.904(2). The motion alleged a "factual inaccuracy" in the order denying termination, specifically that no request had been made to remove the younger siblings from the parents' care. The motion also alleged that the court's ruling was "not made in the best interests of the child." The State then asked the court to reconsider its ruling and reopen the record for additional testimony.

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[2] We note that the guardian ad litem filed a notice of appeal before the juvenile court ruled on the State's motion. Generally, a notice of appeal confers jurisdiction on the appellate court and divests the district court of jurisdiction to consider pending motions. *Wolf v. City of Ely*, 493 N.W.2d 846, 848 (Iowa 1992). But a notice of appeal is considered premature if "the nonmoving party appeals" while a valid 1.904(2) motion is pending. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 628 (Iowa 2000). Where a premature notice of appeal is filed, the decision to which it is addressed is considered interlocutory until the district court rules on the motion. *Id.* In this case, the State asserted in its motion that the guardian ad litem joined its request to reopen the record. The guardian ad litem voluntarily dismissed its appeal, but not until after the district court granted the State's motion. Moreover, the Clerk of the Supreme Court issued procedendo on December 10, 2010. We take no position on the jurisdictional question raised by the guardian ad litem's notice of appeal.

With the exception of alleging a factual error, the substance of the State's motion did not align with the purpose of rule 1.904(2). Motions under rule 1.904(2) allow parties to ask the district court to enlarge or amend its findings and conclusions. "They are not vehicles for parties to retry issues based on new facts." *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995). To the extent that the State was asking to reopen the record to offer additional testimony, rule 1.904(2) did not offer any relief. *See J.J.S.*, 628 N.W.2d at 30.

Moreover, because the State filed its motion after a final adjudication of the termination case, it cannot be considered a motion to reopen the record pursuant to Iowa Rule of Civil Procedure 1.920 (allowing any party to offer further testimony to correct an oversight before final submission). *Id*. Further, this case is not like *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984), where the juvenile court was allowed to reopen the case after final submission following a hearing as to temporary placement of a child in need of assistance. "Considering the inherently more substantial rights at stake in termination proceedings," our court has previously concluded that juvenile courts do not have the ability to reopen the record to receive additional evidence after final adjudication on the merits of a termination petition. *J.J.S.*, 628 N.W.2d at 30-31. The appropriate procedure for the State would have been to file a new petition alleging grounds for termination, which would have provided the normal procedural protections to the parents. *Id*. at 31.

In its November 10, 2010 order, the juvenile court addressed the factual error alleged by the State by amending the factual findings included in its

October 27, 2010, order. Then the court went beyond the scope of rule 1.904(2) by granting the State's request to reopen the record and reconsider the termination ruling.

Because the juvenile court lacked authority to grant the State's motion to reopen the record, its decision to terminate parental rights on January 28, 2011, was invalid. The last valid ruling in place was the order denying termination and granting the parents six more months to work toward reunification. The juvenile court erred in holding proceedings subsequent to its order denying the termination petition. The parties should proceed in accordance with the court's October 27, 2010 order, as amended in the order issued November 10, 2010.

REVERSED.