IN THE COURT OF APPEALS OF IOWA

No. 1-240 / 11-0225
Filed April 27, 2011

IN THE INTEREST OF M.E.,
Minor Child,

R.K.E., Mother,
Appellant,

D.W.K., Father,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

A mother and father separately appeal from the juvenile court's order in a child in need of assistance case. **AFFIRMED.**

Jane K. Odland of Walker, Billingsley & Bair, Newton, for appellant mother.

Jennifer L. Steffens of Steffens & Grife, P.C., Marshalltown, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Rebecca Petig, County Attorney, for appellee State.

Fred Stiefel, Victor, for intervenor.

Dustin D. Hite of Heslinga, Heslinga, Dixon & Moore, Oskaloosa, attorney and guardian ad litem for minor child.

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

VOGEL, P.J.

Rhonda and David separately appeal from the district court's order in a child in need of assistance (CINA) case. Both contend there is not clear and convincing evidence to continue the removal of M.E., and reasonable efforts were not made to return her to their care. Rhonda argues the State failed to prove the grounds for adjudication by clear and convincing evidence.[1] We review their claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

M.E. was adjudicated in need of assistance pursuant to Iowa Code section 232.2(6)(b), (child has been or is imminently likely to be physically abused or neglected), and 232.2(6)(c)(2), (child has suffered from the parent's failure to supervise).

Rhonda and Wes were married and had three children together; they later separated. The family came to the attention of the Iowa Department of Human Services (DHS) in March 2010, after Rhonda began a relationship with David, and David allegedly physically abused one of Rhonda's children. An investigation revealed David had a history of founded child abuse, including sexually abusing six-year-old twins as well as his own eight-month-old daughter. The latter incident caused him to be listed on the Iowa Sex Offender Registry, after a conviction of lascivious acts with a child. Rhonda agreed to sign a safety plan that David not be alone with the children. Rhonda's three older children were adjudicated in need of assistance in June. The children were later placed

[1] David states in his petition on appeal, "The Petitioner did prove by clear and convincing evidence that the child was likely to be placed in harm or that the parties were not complying with the safety plan." Given the context of this sentence, we will assume this was a typographical error, and he intended to state, "The Petitioner did *not* prove . . ."

with their father after Rhonda violated the safety plan by leaving the children alone with David.

M.E. was born to Rhonda and David in September 2010. Six days later, the court ordered M.E.'s temporary removal on its finding that removal was "necessary to avoid imminent danger" to the infant. She was adjudicated a child in need of assistance in October and the temporary removal application was granted, continuing her placement in relative care. After a dispositional hearing in January 2011, the court continued M.E.'s removal and affirmed the CINA. It found

> that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, as the mother has not demonstrated that she understands the risk to the minor child that comes from contact with the biological father and therefore cannot be trusted to protect the child from harm; the mother and biological father, a previously registered sex offender, have maintained an ongoing relationship during the pendency of this action and have at times hidden and/or denied the existence of the relationship to DHS service providers.

Rhonda appeals, arguing the State failed to prove the grounds for adjudication and the need for M.E.'s continued removal by clear and convincing evidence. She also contends reasonable efforts were not made to return M.E. to her care.

There is an overall concern that Rhonda does not acknowledge or appreciate the risk David poses to M.E. DHS worker Patricia Hauersberger testified that Rhonda had not been honest about ending her relationship with David, which "places [M.E.] at risk if that relationship is there and all the safety protectants aren't in place." Hauersberger continued that DHS communicated these risks to Rhonda in relation to her older children, but she broke the safety

plan, so DHS again communicated the risks upon the removal of M.E., and Rhonda has failed to comply.

The district court found reasonable efforts were made to prevent or eliminate the need for removal, including "visitation, a family safety plan, parenting assessments, and FSRP services." While Rhonda also alleges she requested gas vouchers, which were not provided to her, she did receive two gas vouchers to help her travel to see M.E., but then moved to a residence farther away from the relative placement. Despite these efforts, Rhonda failed to take full advantage of the visitation opportunities she was given with M.E.

On September 30, 2010, the court "ordered that the Department of Human Services shall provide, with the mother's participation, a parenting evaluation," which appears not to have been done prior to the dispositional hearing. While Rhonda asserts this demonstrates a failure to provide her with reasonable services, she failed to bring this to the court's attention at or prior to the dispositional hearing, such that the court could consider and rule on the issue. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (stating that during the course of the child in need of assistance proceedings, a parent has a responsibility to challenge the sufficiency of services to allow for reunification). The court found Rhonda did not understand the risks posed to M.E. by her continued involvement with David, and because of potential harm, adjudication and continued removal of M.E. were necessary.

David also contends the State did not prove clear and convincing evidence existed to continue the removal of M.E., and reasonable efforts were not made to return her to "either parent." Hauersberger testified that DHS made

an effort to offer services to David. She stated that while David had become more amenable to services as the case progressed, initially he was difficult to work with and resistant to services. He had been offered participation in family team meetings and supervised visitation, and would be offered additional services. The court found reasonable efforts were made to prevent removal of M.E., but the litany of crimes David committed presented substantial safety concerns that did not allow placement of M.E. in his care. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (explaining that evidence of the parent's past performance may be indicative of the quality of the future care that parent is capable of providing).

We agree with the district court that reasonable efforts were made to return M.E., but grave safety concerns still existed, and remedial steps were not taken by either Rhonda or David such that the court could return M.E. to either parent's care. A child's safety and need for a permanent home are the primary concerns in determining the child's best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). We accordingly affirm the adjudication of M.E. as a child in need of assistance pursuant to section 232.2(6)(b) and (c)(2), necessitating her continued removal from the home.

AFFIRMED.