

IN THE COURT OF APPEALS OF IOWA

No. 1-541 / 11-0663

Filed July 27, 2011

**IN THE INTEREST OF K.P.,
Minor Child,**

E.P., Mother,
Appellant.

Appeal from the Iowa District Court for Tama County, Casey D. Jones,
District Associate Judge.

A mother appeals the termination of her parental rights to her daughter.

REVERSED.

Deborah M. Skelton, Walford, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Brent D. Heeren, County Attorney, for appellee State.

John Bishop, Cedar Rapids, for appellee father.

Patrick D. McMullen of Kaplan, Frese & Nine, L.L.P., Marshalltown,
attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

VAITHESWARAN, J.

A mother appeals the termination of her parental rights to her daughter, born in 2009. She contends: (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the district court and (2) termination was not in the child's best interests. We find the first argument dispositive.

I. Background Facts and Proceedings

The mother was nineteen years old when she gave birth to her daughter. She lived independently with the child in subsidized housing in Tama, Iowa.¹

When the child was three months old, allegations surfaced that the mother was not properly caring for her. A Department of Human Services investigation uncovered the following: the mother was in the kitchen while the baby was in the living room on a futon; the baby had a bottle of apple juice in her mouth; a steak knife was on the floor and a can of aerosol spray was on a child's chair; and two dirty diapers were in the vicinity of the child. A department social worker explained to the mother that it was inappropriate to prop up a bottle, feed the baby apple juice, and not be in the same room as the baby when the baby was eating. The social worker acknowledged that the mother "responded appropriately" and the child was "not yet old enough to get into" the things in the living room, but stated the mother "does not seem to understand the possible consequences of her actions."

¹ The mother paid \$15 per month in rent for the apartment. She received food, medical assistance, and diapers when the child was in her care.

The mother signed a safety plan agreeing she would attend to the child's medical needs, including her four-month immunizations.² The social worker attested that the mother did not follow through with these requirements and "declined all services." Nonetheless, the social worker stated she believed the mother "could be successful with her child should she have the right resources and participate in the services available."³

Despite this statement, the department petitioned to have the child removed from the mother's care. The district court granted the petition and the department placed the child with her maternal grandmother in Dubuque, a several-hour drive from Tama. The child remained in Dubuque throughout the child-in-need-of-assistance and termination proceedings, and the mother remained in Tama.

The mother agreed to participate in reunification services offered by the department. She stipulated to the adjudication of the child as a child in need of assistance and began meeting with a service provider.

The service provider stated the mother "was not [] under the influence of drugs or alcohol" during their meetings, clearly "care[d] for her daughter," was "cooperative with" her, and had "appropriate" interactions with her child. She characterized the mother's apartment as "clean and appropriate."

² The child was taken to her two-month well-baby checkup and was reportedly doing well at that time. At the time of the investigation, the child was not yet four months old. The four-month checkup was scheduled in Dubuque following the child's removal, and the mother attended.

³ After the child was born, the mother received assistance to care for the child, which lasted until the woman who was helping her retired in October 2010.

The department social worker who oversaw the case similarly reported that the mother “continue[d] to participate in in-home services and also participated in a family team meeting.” She seconded the service provider’s opinion that the mother’s interactions with the child were “appropriate.” She also encouraged the mother to “continue to participate in frequent visits with [the child] and be responsible for caring for her during her visits.”

The social worker’s view about “frequent visits” was echoed in the department’s family case plan, which identified the need for the child to “continue to bond to her parents through consistent visitation/contact.” This “consistent visitation/contact” did not happen. While the department initially discussed the possibility of weekly visits, only about two per month were scheduled and, in the end, only one per month materialized.

The department required the visits to take place at the mother’s parents’ homes rather than her apartment. As the mother was unemployed and did not have a car or driver’s license, she asked the department for transportation assistance. A service provider furnished two bus tickets to Dubuque. Most of the remaining costs were borne by family members.⁴

The State petitioned to terminate the mother’s parental rights on several grounds. The district court granted the petition pursuant to Iowa Code sections 232.116(1)(e) (2009) (requiring proof of several elements including proof that the parent failed to maintain significant and meaningful contact with the child) and 232.116(1)(h) (requiring proof of several elements including proof that the child

⁴ It appears the service provider in Tama may have transported the mother to and from some of the visits at her father’s house in Tama, but no transportation assistance was provided to and from Dubuque with the exception of the two bus tickets.

could not be returned to the parent's custody). The district court also denied the mother's request to defer termination and have guardianship placed with her mother so that she could maintain contact with the child.

The mother appealed.

II. Evidentiary Support for Termination Grounds

If a court orders a child transferred to the department for placement, the department is obligated 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). "Reasonable efforts" "means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home." *Id.* § 232.102(10)(a). Iowa Code section 232.116(1)(e) and (h), on which the district court relied in terminating the mother's parental rights, "contain a common element which implicates the reasonable effort requirement." *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).⁵ A challenge to the sufficiency of the evidence supporting these grounds for termination implicates the reasonable effort requirement. *Id.*

In this case, the mother repeatedly asserted she required transportation assistance to facilitate visits with her daughter. The district court found that the department made reasonable efforts to reunify the mother with her child and

⁵ Since *In re C.B.* was decided, section 232.116 was amended. However, the current version of section 232.116(1)(e) and (h) correspond to subsections of the 1997 Iowa Code cited by the *C.B.* court. Compare Iowa Code § 232.116(1)(e), (h) (2009) with Iowa Code § 232.116(1)(d), (g) (1997); see also *C.B.*, 611 N.W.2d at 492.

further found that the services provided by the department and other agencies “were specifically tailored to address the issues facing this family.”

On appeal, the mother reiterates that the department “did nothing to assist [her] with fulfilling [its] expectations” and did not afford her “services that would have truly tested her ability to parent.” We agree.

The mother made her interest in visits known to the department at the outset. During a meeting in her home a month after the child’s removal, her father’s companion asked a service provider and a department representative why visits were only occurring every other weekend, as the judge had indicated the mother should be visiting the child two to three times per week. The professionals apparently were not forthcoming with an answer.

At a later meeting, the service provider stated she would “get some assistance with visits with hopefully some gas cards or bus tickets so that [the mother] can go to Dubuque to see [the child] instead of her mother always driving here.” The mother indicated she “liked this idea.” As noted, the service provider gave the mother two bus tickets. The mother used both of them. With the exception of these two bus tickets and possible rides between the mother’s apartment in Tama and her father’s home in Tama, the department did not fund the costs of transporting the mother to the visits or alternately arrange to have the child transported to her apartment.

Instead, the department advised the mother that she might want to consider moving to Dubuque. However, the maternal grandmother’s spouse refused to accommodate the mother in their home, the mother received no departmental assistance in finding affordable housing in Dubuque, and the

department was still insisting she search for employment in Tama. Additionally, the department continued to furnish no transportation assistance to Dubuque, in contravention of a mandatory review order which required the department to provide reasonable reunification services, including transportation assistance.

On our de novo review, we conclude the department did not furnish the single service that was critical to facilitating the mother's reunification with the child: transportation or transportation assistance. Accordingly, the department failed in its statutory obligation to provide reasonable reunification efforts. As this is a key element of both grounds for termination cited by the district court, we conclude the State failed to prove those grounds by clear and convincing evidence.

In reaching this conclusion, we have considered the district court's statement that the mother "had the ability, but simply chose not to comply with services." The court cited a trip the mother made to Dubuque to visit her boyfriend and noted she "was able to arrange transportation" for that trip herself. However, the boyfriend paid for her to come to Dubuque on that occasion, the mother stayed with her mother while she was there, and the mother went out to see her boyfriend only after the child went to sleep, from approximately 10:30 p.m. to 12:30 a.m.

It is true that, according to several witnesses, the mother did not "follow-through" with certain appointments, primarily geared towards evaluating her mental health. Whether her lack of follow-through was partially a symptom of her

previously diagnosed attention deficit hyperactivity disorder is unclear.⁶ What is clear is that the lack of transportation assistance affected her ability to keep key appointments, such as a scheduled cognitive evaluation in Iowa City. It is also clear that the mother did not miss the few scheduled visits with her daughter for which she had transportation. This tells us that the mother “could be successful with her child should she have the right resources,” just as the department predicted at the outset of the removal proceeding.

As the State failed to prove that the department made reasonable efforts to reunify the mother and child, and this was an element of both termination grounds cited by the district court, we reverse the termination decision. In light of this disposition, we find it unnecessary to determine whether the child’s best interests justified termination.

REVERSED.

Mullins, J., concurs; Vogel, P.J., dissents.

⁶ The mother testified that she met with mental health providers on two occasions but she could not continue the sessions because she lost her Medicaid card and a new card had yet to be approved.

Vogel, P.J. (dissenting)

I respectfully dissent, and would defer to the district court, which after considering all the evidence and testimony found,

[T]here is no doubt that termination would be in [K.P.'s] best interests as her mother has failed to work in any meaningful way to have [K.P.] returned to her care. . . . The best interest of [K.P] would be served by termination of her [] mother's parental rights. The child's safety can be best ensured by continued relative placement . . . with the child's maternal grandparents, because she is very bonded with them and they have been very diligent in meeting all of [K.P.'s] needs.

The majority focuses on whether Iowa Department of Human Services (DHS) provided Emily reasonable efforts to facilitate visits with K.P., based on Emily's assertion that the department "did nothing to assist [her] with fulfilling [its] expectations," and did not afford her "services that would have truly tested her ability to parent." I find the record as a whole demonstrates DHS's concerted effort to reunify Emily with K.P., and Emily's continued failure to participate in and comply with those reunification efforts.

K.P. has been out of Emily's care since April 2010, and the record reflects that Emily has grossly failed to utilize services or show any motivation to work toward reunification with her daughter. DHS social worker, Kerry Grimm testified,

[Emily] really has done very little through what we've planned through case planning, monthly visits with her, what the provider has provided to her, what we have come up with on family team meetings, giving very specific dates and resources on how to get where she needs to go to meet her goals, she has done very little to do that.

Emily has not had steady income or employment, and is dependent on others for her financial needs. While Emily briefly held one job at Hardee's in June 2010, she failed to maintain other employment. Emily began a Certified Nursing

Assistant program prior to DHS involvement, but was asked to leave the program because of poor attendance. After K.P. was removed, Emily failed to communicate with DHS, follow through with appointments, or participate in parenting classes. Grimm reported that when Emily was having visits with K.P. she was easily distracted, and advised Emily that she needed to be more proactive in caring for K.P.

On December 8, 2010, the court ordered a cognitive functioning evaluation, on Emily's request. Grimm made arrangements for this testing, but Emily failed to attend the evaluation. DHS also arranged for Emily to have mental health counseling at the Tama County Mental Health clinic. Emily failed to attend arguing she did not have transportation, although the facility was only five or six blocks from Emily's home.

Emily also missed an assigned meeting at The Partnership Center, a school which offers an alternative opportunity for students to complete their high school education and earn a diploma. While the location was just four to five blocks from Emily's home, her excuse for not attending was that she "didn't have a ride there." When questioned about her failure to attend these services, Emily testified,

Q: You mentioned transportation difficulties in getting to the mental health clinic. How far is that from your residence? A: I don't know.

Q: Five blocks? A: I'm not sure.

Q: Six? A: Probably close to six. Maybe more.

Q: And how many blocks is it from your residence to the partnership center? A: Probably four or five.

Q: And you're saying that's too far to walk? A: Yes.

Children and Families of Iowa counselor, Rachel Johnson, testified that in the entire time K.P. has been out of Emily's care, there has not been one time when she felt Emily was in a position to assume care of K.P. Johnson testified that she consistently had trouble contacting Emily: she would call several times and not get any response or a returned call, she sent letters in the mail, and also stopped by Emily's house for scheduled visits. Johnson would often text Emily ahead of time to remind her of visits, call Emily when she arrived, wait for twenty minutes or so before leaving, and always left her business card and a note for Emily to call her. She testified Emily made minimal effort to be present for the appointed visits. Johnson reminded Emily "countless" times that termination of Emily's parental rights was a possibility if she did not become motivated and do the things necessary to "get [K.P.] back," but Emily did not appear to take her seriously. Grimm testified, "The biggest concern has been Emily has been provided with a lot of opportunity, a lot of assistance, a lot of resources to get [K.P.] back in her care and has not taken full advantage of those."

While the majority cites a lack of transportation to facilitate visits between the Emily in Tama and K.P. in Dubuque, the record reflects this was just one facet of the reunification efforts. Emily's family provided her a car, the initial insurance, and license plates, but Emily failed get a job in order to maintain insurance or registration. DHS provided Emily two bus tickets to Dubuque to see K.P., arranged for Emily's mother to bring K.P. for visits to Tama to see Emily, and encouraged Emily to make an effort to find other means of transportation. Emily's boyfriend once paid for her to come to Dubuque to visit him, but in spite of the close proximity of the boyfriend's house to where her mother lived with

K.P., Emily spent very little, if any time visiting K.P. As the district court found, “Emily has made no discernable effort to either obtain her own transportation or arrange other transportation so she can have more contact with [K.P.]. Instead, she blames [DHS] for not being able to provide her with more transportation.”

I agree with the district court that Emily has not put forth even minimal effort necessary to show she is serious about her desire to regain custody of K.P. She has passed up many opportunities to improve her parenting ability and has not shown she can provide the stability K.P. needs. See *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993) (“We are to consider what the future likely holds for the children if the children are returned to their parents.”). The district court found, “The Court can think of no other services which could have been offered to Emily [] to help [her] regain custody of the child.” Unlike the majority, I would not shift the blame to DHS, but would rather focus on what Emily has utterly failed to do and would thus affirm the district court’s termination of Emily’s parental rights.