**IN THE COURT OF APPEALS OF IOWA**

No. 1-792 / 11-1345
Filed November 9, 2011

**IN THE INTEREST OF K.E., C.E., R.E., and M.E.,
Minor Children,**

**R.E., Mother,**
Appellant,

**D.K., Father of M.E.,**
Appellant.

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

A mother appeals a dispositional review order pertaining to her three older children, and she and the father of her fourth child also appeal a dispositional order pertaining to their infant daughter. **AFFIRMED.**

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

Jennifer Steffens of Steffens Law Office, P.C., Marshalltown, for appellant father of M.E.

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

Fred Stiefel, Victor, for appellee father of K.E., C.E., and R.E.

Dustin Hite, Oskaloosa, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**VAITHESWARAN, P.J.**

A mother appeals a dispositional review order pertaining to her three older children. She and the father of her fourth child also appeal a dispositional order pertaining to their infant daughter.

***I. Three Older Children***

The mother has four children, three of whom were the subject of a child-in-need-of-assistance action filed in the spring of 2010. This action was based on the criminal history of the mother's live-in boyfriend, David, and, particularly, his history of sexually abusing young children. That history is detailed in a prior opinion of our court. *See In re K E.*, No. 10-1759 (Iowa Ct. App. Jan. 20, 2011). There, we concluded that the State presented clear and convincing evidence to support the removal of the children from their mother's custody and their adjudication as children in need of assistance. *Id.*

Several months after our resolution of the appeal, the district court entered a dispositional review order confirming that the children needed to remain out of their mother's custody and also confirming that they continued to be in need of assistance. On appeal of this order, the mother contends: (1) "there is not substantial or clear and convincing evidence to continue the removal of the children," and (2) "there is not clear and convincing evidence that these children remain children in need of assistance."

As a preliminary matter, we note that a review hearing is not a re-adjudication of the original neglect. *In re Welcher*, 243 N.W.2d 841, 844 (Iowa 1976). Instead,

> the proper issue should be whether there has been a change of circumstances since the original hearing which would warrant returning the child to the parent. This would allow the history of the parent to be considered as it bears on the likelihood of the parent having made the adjustments necessary for the child's return, but would not permit relitigation of the prior dependency or neglect determination.

*Id.*

Our prior appeal centered on the mother's involvement with David and the risk this posed to the children. We determined that the mother was indeed engaged in a relationship with him and allowing the children to remain in the mother's home while David was living there "would be contrary to the welfare of the children, in order to preserve their safety."

Little has changed since that opinion. The mother stated she wished to continue her relationship with David. Indeed, in a Facebook statement, she declared her unwavering commitment to him:

> [David], it has been a year and a half together today. We have been through a lot of crap but you know I am not going anywhere. There's no one in the world I would rather be with and nowhere else I would rather be. You and your family have been wonderful and things will get back to normal hopefully soon. I love you with everything that I am. We're going to be bringing two more babies into this world in a few months and I know that you are excited and scared and I am too, but just remember they are a product of me and you and our love. I love you bunches.

David likewise declared his commitment to the mother, conceding he spent approximately three nights a week at her home. When asked about his criminal history, he acknowledged a prior finding of guilt for inappropriately touching a child. While he noted that the resulting conviction for lascivious acts with a child was almost two decades old, a risk assessment and psychosexual evaluation

prepared before the dispositional review hearing provided little comfort that the risk of abusive conduct had abated. Specifically, the evaluator stated:

> [David] does not take accountability for his offense behaviors. There are concerns about his amenability to treatment due to his high level of defensiveness, and his minimization and denial of sexual problems, which indicates an avoidance of change. He shows little contrition for his actions which suggests he may not have much incentive to change his behavior.

The evaluator opined:

> I would recommend that [David's] twice a week supervised visits with his daughter [ ] continue to be completely supervised at this time as [David] presents at least a **moderate level** of risk to the younger children in my opinion.

We recognize that David followed the evaluator's recommendation to pursue therapy and, at the time of the dispositional review hearing, had participated in four sessions with a counselor. We further are cognizant of the counselor's opinion that "[David] represents the low risk for future sexually abusive behavior." These facts do not alter our view of the risk David posed to the children. The counselor's cursory report contains internally contradictory statements and broad predictions unsupported by test results or other reliability measures. Additionally, as the district court noted, David conceded he did not discuss the details of his abusive conduct with the counselor. Because his opinion was "obviously" not based on "full disclosure," the court "totally discounted" the opinion as "unreliable." At this stage, so do we.

Finally, the views of individuals who interacted with the family persuade us that the children would still be at risk if returned to their mother. An Iowa Department of Human Services social worker opined that it was not safe for the children to be returned to the mother's care and custody as long as David was

living in the home. This opinion was seconded by a service provider who supervised visits with the children. While he found the mother's interaction with the children to be appropriate, he expressed concern about her continued involvement with David. A court-appointed special advocate similarly stated, "I am concerned that [the mother] continues to have a relationship with David and does not seem to understand the need to put her children first."

We conclude there was not a substantial change of circumstances to warrant a modification of the disposition with respect to the three older children.

***II. Infant***

After the State filed a child-in-need-of-assistance petition with respect to the three older children, the mother gave birth to a fourth child. Paternity testing revealed that David is the biological father of this child. Shortly after the child's birth, the State sought her removal and her adjudication as a child in need of assistance. The child was placed with relatives and, like the older three children was adjudicated in need of assistance. At a subsequent dispositional hearing, the district court concluded that custody should remain with those relatives. Both parents appealed.

On appeal, the mother raises the same arguments she raised with respect to the older three children. Because this child was not the subject of the original dispositional order, which was appealed to our court, we are not limited to the record made following the entry of that order. Instead, we review the entire record beginning with her removal and adjudication. Our review is de novo. *See Welcher*, 243 N.W.2d at 843.

The child, who was just eight months old at the time of the dispositional hearing, was removed from the mother's care for the same reasons as the older three children. There was evidence that David had sexually abused an eight-month-old infant following his release from prison on the lascivious acts conviction. Based on this evidence, the department asked the mother to sever her relationship with David. As noted, the mother did not. We conclude the district court acted appropriately in declining to return the child to the mother and in concluding that she remained a child in need of assistance.

Turning to David's appeal, he contends: (1) "there is not substantial or clear and convincing evidence to continue the removal of the child from either of the biological parents," and (2) "the department has not made reasonable efforts to return the child to either biological parent." For the reasons stated above, we find the first argument unavailing.

With respect to the second argument, David is correct that the department was obligated to make reasonable efforts toward reunification. *See In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). He is also correct that the department initially did not fulfill this obligation. For example, although David informed the department that he believed he was the father of the child, the department declined to administer a paternity test. The department only acknowledged David was the father after he underwent the test at his own expense and furnished the department with the results. The department also dragged its feet on providing other services, including a risk assessment. Nonetheless, once it became apparent that David was interested in maintaining a relationship with his

daughter, the department implemented supervised visits. For that reason, we decline to find that the department failed in its reasonable efforts mandate.

We affirm the dispositional and dispositional review orders.

**AFFIRMED.**