IN THE COURT OF APPEALS OF IOWA

No. 2-040 / 11-1937
Filed February 1, 2012

IN THE INTEREST OF A.O. and T.O.,
Minor Children,

B.J.O., Mother,
Appellant.

Appeal from the Iowa District Court for Ringgold County, Monty W. Franklin, District Associate Judge.

A mother appeals from the juvenile court's dispositional order in a child in need of assistance proceeding. **AFFIRMED.**

Leanne M. Stiegel-Baker of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Clint Spurrier, County Attorney, for appellee.

Jane Orlanes, Des Moines, for father.

Patrick Greenwood, Lamoni, attorney and guardian ad litem for minor children.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

TABOR, J.

A mother appeals from the juvenile court's permanency order in a child in need of assistance (CINA) proceeding.[1] She contends the court erred in establishing a guardianship for her children, A.O. and T.O., with their paternal aunt. We find clear and convincing evidence supports the entry of the permanency order. Granting the mother an additional six months to reunify with the children before establishing the guardianship is not in their best interests. Accordingly, we affirm.

I. Background Facts and Proceedings.

We outlined this family's history with the Department of Human Services (DHS) in *In re A.O.*, No. 11-1760, also filed today. After entering the October 17, 2011 dispositional order at issue in that appeal, the juvenile court held a permanency review hearing on November 18, 2011. At that proceeding, the DHS sought to establish a guardianship for the children with their paternal aunt. The children's guardian ad litem agreed with the DHS plan. Their father, William, consented to the guardianship. The mother, Billie Jo, had previously agreed to the guardianship, but at the permanency hearing asked for six more months to reunite with her children.

In its November 18, 2011 order, the juvenile court found that the mother "has failed to make the children a priority and place the needs of the children above her need for a boyfriend." The court appointed the paternal aunt as the children's guardian. The mother appeals.

---

[1] The mother appealed a subsequent dispositional order in this case which we affirmed in *In re A.O.*, No. 11-1760 (Iowa Ct. App. Feb. 1, 2011), a decision also filed today.

II. Scope and Standard of Review.

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). "We review 'both the facts and the law, and we adjudicate rights anew." *Id*. (citation omitted). We give weight to the juvenile court's findings of fact, but are not bound by them. *Id.* As in all juvenile proceedings, our fundamental concern is the children's best interests. *Id.*

III. Analysis.

Billie Jo asserts the juvenile court failed to make specific findings as required by Iowa Code section 232.104(3) (2011). That section states:

> Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:
> a. A termination of the parent-child relationship would not be in the best interest of the child.
> b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.
> c. The child cannot be returned to the child's home.

Iowa Code § 232.104(3).

In our de novo review, we find that the record contains convincing evidence to support all three elements of section 232.104(3).

In relation to subsection (b), Billie Jo contends that because the DHS goal was to create a guardianship with the children's aunt, the agency did not offer services or make other reasonable efforts to reunite the children with their mother. The State counters that both Billie Jo and William agreed to the proposed guardianship from early in the case through the October dispositional hearing.

We agree that the DHS must exert reasonable efforts toward reunifying parents and children. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa 2005). But the parents bear an equal obligation to demand other, different, or additional services before a permanency or termination hearing. *Id.*

Billie Jo cites to her request at the adjudicatory hearing for additional visitation and a sex-offender evaluation for her boyfriend as evidence she sought additional services before the permanency hearing. But Billie Jo also acknowledged that throughout this case, she agreed to have a guardianship arrangement pursued with the paternal aunt and never informed the DHS she sought to have the children returned to her care. Under these circumstances, the DHS's efforts were reasonable. *See In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) ("[T]he department must assess the nature of its reasonable efforts obligation based on the circumstances of each case."); *In re L.M.W.*, 518 N.W.2d 804, 807 n.1 (Iowa Ct. App. 1994) (noting reasonable efforts mandate requires agency to make reasonable efforts to prevent placement or to reunify families in each case).

In relation to subsection (c), the mother argues the State offered insufficient evidence to show the children cannot be returned to her home. In its October 17, 2011 dispositional order, the juvenile court found the children could not be returned to the home of either parent. The mother did not dispute that finding. In the month between that order and the court's permanency order entered on November 18, 2011, nothing had changed in the case. The mother continued to live with Harvey, a convicted sex offender who had sexually abused

his step-daughter, and the mother did not see why the DHS was concerned about the children's exposure to him. The mother argues that because Harvey was not required by statute to register as a sex offender after June 2011, she would not be committing child endangerment by allowing her children to live in his home.

The guardian ad litem addressed this point at the November hearing:

> [S]he's living with a gentleman who committed a sex act with a child. She is the parent of the children. She does not see him as a risk to those children, even though he has not undertaken any sort of assessment or treatment to evaluate that risk or correct the defects from his thinking in terms of appropriateness with contact with the children.

We do not believe that the end of a sex offender's obligation to register necessarily means that he no longer poses a danger to children with whom he has unsupervised access. Convincing evidence shows the children cannot be placed in the home shared by Billie Jo and Harvey.

Finally, the mother contends she should be granted an additional six months to reunite with her children. Section 232.102(2)(b) allows the court to enter an order to continue placement of a child for an additional six months upon enumeration of "specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the children from the child's home will no longer exist at the end of the additional six-month period." When considering whether to grant such an extension, the court must "constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home." *A.A.G.*, 708 N.W.2d at 92.

The juvenile court was unable to make a finding that the need for removal would no longer exist after a six-month extension. Likewise, we are unable to find additional time would significantly change the complexion of this case to allow the children to be safely returned to the mother's care. The record shows the children are bonded with Billie Jo. This bond will not be severed by the creation of the guardianship; placement of the children with their paternal aunt will allow them continued contact with their mother. The stability offered by the guardianship is in the children's best interests. Accordingly, we affirm the juvenile court's November 18, 2011 permanency order.

AFFIRMED.