

IN THE COURT OF APPEALS OF IOWA

No. 2-354 / 12-0530
Filed May 23, 2012

**IN THE INTEREST OF A.M.,
Minor Child,**

H.P., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

REVERSED AND REMANDED.

Nathan W. Tucker, Davenport, for appellant mother.

John D. Zimmerman, Clinton, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant
County Attorney, for appellee-State.

Marsha Arnold, Davenport, for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ. Tabor,
J., takes no part.

EISENHAUER, C.J.

A mother appeals from the order terminating her parental rights to a child. She contends the court abused its discretion in denying her motion for a continuance. She also contends the court erred in finding grounds for termination rather than deferring termination for an additional three months. We reverse and remand.

On the Tuesday set for the termination hearing, the mother's attorney filed a motion to continue. The motion stated the mother had been arrested the preceding Friday and transported to jail in another county. It further stated the mother's presence was "vital" and her attorney could not effectively represent her interests without her presence and assistance. At the hearing, the attorney stated:

I don't have much to add to the motion. I did talk with her yesterday. She is being held for, I believe contempt for not paying child support payments in Bremer County, and because of that, she can't be present, although she probably could be in the next couple of weeks, but obviously, today she can't be.

The father's attorney did not resist the mother's motion and made an oral motion for continuance for the father. The State and the guardian ad litem resisted the motion. The court denied the motions for a continuance and proceeded with the hearing. The mother presented no witnesses and no evidence. The court filed its termination order later the same day.

We review the denial of a motion to continue for an abuse of discretion and will reverse only if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). "Denial of a motion to

continue must be unreasonable under the circumstances before we will reverse.”

Id.

While we recognize the mother’s own actions led to her unavailability, given the minimal delay sought and the unexpectedness of the mother’s unavailability, we conclude the court abused its discretion in denying the mother’s motion to continue. We reverse the termination of the mother’s parental rights and remand for further proceedings to give the mother the opportunity to be heard.

REVERSED AND REMANDED.