

IN THE COURT OF APPEALS OF IOWA

No. 2-616 / 12-1056
Filed August 8, 2012

**IN THE INTEREST OF S.M. and F.M.,
Minor Child,**

**J.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Franklin County, Peter B. Newell,
District Associate Judge.

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

AFFIRMED.

Michael J. Cross of Cross Law Firm, Hampton, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Dan
Wiechmann, County Attorney, and Brent Symens, Assistant County Attorney, for
appellee.

Larry Johnson of Walters & Johnson, Iowa Falls, for father.

Randy Johansen, Sheffield, attorney and guardian ad litem for minor
children.

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

BOWER, J.

A mother appeals the termination of her parental rights to her children. She contends the State failed to make reasonable efforts to reunify her with her children. She also alleges she requested and was denied additional visitation. Even assuming the mother made a formal request for additional visitation, the record shows the mother did not utilize all of the visitation offered. Because reasonable efforts were made, we affirm the termination of the mother's parental rights.

I. Background Facts and Proceedings.

The children were removed from the mother's care in January 2009 after two years of services were provided to the mother and she was still not attending to her own mental health and continued putting the children at risk of abuse or neglect. The children were adjudicated in need of assistance in February 2009. In August 2009, the children were placed with their father. However, in December 2010 the Department of Human Services (DHS) learned the father was being investigated for sexually abusing his twelve-year-old stepdaughter. The children were removed from the father's care and the father is believed to have moved to Mexico.

The mother is a low-functioning individual who endured sexual abuse as a child. She has never consistently participated in mental health services to address this abuse. She has a history of being involved in relationships with men who are physically abusive to her and the children. The mother previously surrendered custody of her oldest child to the maternal grandmother.

The mother failed to consistently visit with her children following their removal. She did not attend any visits with them between July 2009 and October 2009. She attended one visit in November 2009, but then did not see the children again until March 2010. The mother did not attend any visits in April, May, June, or July of 2010. Her last visit with S.M. was in September 2010. Although the mother was aware she was allowed as much visitation with F.M. as she desired, she only attended eleven visits with F.M. over a thirteen-month period.

On January 12, 2012, the State filed a petition seeking to terminate the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (f), and (i) (2011). Hearings were held in March and April 2012. On May 22, 2010, the juvenile court entered its order, which found the services provided to the mother over the past six years had been ineffective and the children cannot be safely returned to the mother's care. The court further found termination was in the children's best interests and none of the factors set forth in section 232.116(3) merited preserving the mother's parental rights. The mother's parental rights were terminated.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

III. Reasonable Efforts.

The mother contends the State failed to make reasonable efforts to reunify her with the children. She complains that after the children were removed from her care, a DHS worker told her she would not be considered a placement option for the children. She claims this statement had a “chilling effect” and discouraged her from active participation with services and compliance with court orders. She admits that she did not consistently participate in services initially because the children were placed with their father, thus satisfying her desire to have the children with at least one of their parents. However, she argues that after the children were removed from the father’s care, she began to comply in hopes the DHS would allow her additional visitation. The mother complains that although she had established a stable relationship, maintained a clean and safe home, and participated in services, the DHS still reported she was not a placement option.

Iowa Code section 232.102(7) states that when the court transfers custody of a child to the DHS, the DHS must “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.” However, the reasonable efforts requirement is not a strict substantive requirement of termination. Instead, the DHS’s efforts to return a child to the parent after removal impacts the burden of proving those elements of termination that require reunification efforts. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The State must show reasonable efforts as part of its ultimate proof that the child cannot be safely returned to the care of a parent. *Id.*

The juvenile court found clear and convincing evidence establishes the children cannot be returned to the mother's care:

[The mother] has continued to indicate that she does not understand why her children were removed from her care. She has not accepted responsibility for this. She has not responded to services and it is doubtful whether services will ever be effective. [The mother] does not have the intellectual ability or insight into how her dysfunctional behavior and how her infrequent, inconsistent contact with these children has been damaging to them, nor does she understand how her inability to resolve her past issues of trauma and abuse have contributed to the exposure of these children to additional trauma and abuse.

We concur with this assessment. The record shows the DHS provided the mother with several opportunities to make the necessary improvements to have the children returned to her care. The mother failed to consistently participate in these services. Although she claims she requested additional visits with the children, the record shows she did not attend all of the visits offered to her. Furthermore, it is evident from the children's behavior following visits with the mother that increasing the number of visits was not in the children's best interests.

There is overwhelming evidence in the record the children cannot be safely returned to the mother's care. Providing the mother with additional visits with the children would not have changed the outcome of this case. Accordingly, we affirm.

AFFIRMED.