

IN THE COURT OF APPEALS OF IOWA

No. 2-761 / 12-1298
Filed September 19, 2012

**IN THE INTEREST OF A.M. and A.M.,
Minor Children,**

**T.S.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Kathryn J. Mahoney, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven H. Halbach, Assistant County Attorney, for appellee.

Christina Shriver, Hudson, attorney and guardian ad litem for minor children.

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

MULLINS, J.

A mother appeals the termination of her parental rights. The mother contends the Iowa Department of Human Services (DHS) did not make reasonable reunification efforts because DHS delayed court-ordered psychological and intellectual testing until twenty-three days before the termination hearing. The mother argues such delay amounts to a denial of reasonable reunification efforts.

I. Background Facts and Proceedings

There are two children at issue in the present appeal: A.M. (born in August 2007) and A.M. (born in December 2009). At all relevant times during the proceedings, the father was serving a twenty-year prison sentence and anticipated deportation to Mexico upon release from prison.

This case first came to the State's attention on December 25, 2009, when A.M. tested positive for methamphetamine at birth. As a result of the mother's methamphetamine use during her pregnancy, DHS filed a founded child abuse report summary on December 31, 2009.

On August 12, 2011, Cedar Falls police officers and a DHS worker visited the mother's home. The children's home had no running water or electricity. According to the State's petition for child-in-need-of-assistance proceedings,

There was garbage strewn throughout the residence, broken windows, and hazardous items in every room of the home. Family members were sleeping on mattresses that were laying in the middle of the living room floor surround by garbage, dirty clothes, etc. [T]he home was very dirty and was completely unsafe for the children. There were containers in the residence that contained human waste and there was a very strong odor.

The oldest child suffered from extreme and obvious tooth decay and was behind in her immunizations.

Police officers reported finding methamphetamine inside the home and a glass pipe used to smoke methamphetamine in a garbage bag outside the home. Both the mother and her live-in boyfriend admitted to recent use of methamphetamine and marijuana. The mother tested positive for high levels of amphetamine and methamphetamine. As a result, authorities arrested the mother and placed the children into family foster care.

On August 13, 2011, the children's foster parents took the children to a local clinic. The clinic treated the children for head lice, scabies, and ear infections. The foster parents enrolled the eldest child in preschool and scheduled oral surgery for her.

On September 15, 2011, the juvenile court held an adjudication hearing. The mother stipulated the children were children in need of assistance. The father was incarcerated and not present at the time of adjudication. The father's attorney neither resisted nor stipulated to the adjudication. On September 16, 2011, the juvenile court entered an order finding both children to be children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2009).

On October 6, 2011, the mother completed a mental health evaluation. The mental health specialist recommended the mother participate in individual therapy sessions every two to three weeks and undergo medication management if necessary. The mother attended only one counseling session and received anti-anxiety/anti-depression medication.

On November 18, 2011, the juvenile court held a contested disposition hearing. The father was not present at the hearing. The father's attorney asked the court to place custody with the father or, in the alternative, to work toward reunification with the mother.

In a November 18, 2011 Lutheran Services in Iowa (LSI) report to the juvenile court, the children's case worker stated,

[The mother] has minimized her substance use and mental health needs. [She] stated in this reported period that she felt that she was a good parent while using meth. She has been inconsistent with following through with meetings [She] has also promised her daughters things such as seeing them at time or calling them at time and does not follow through.

When [the mother] does interact with the children she i[s] hands-on and interactive. [The mother] appears to enjoy her time with [her children]. A bond is apparent between [the mother] and [her children].

The juvenile court found it was not in the children's best interest to return them to their mother's care at that time and placing the children in the father's custody was not appropriate. At the conclusion of the disposition hearing, the mother requested, and the juvenile court ordered, additional psychological and intellectual testing.

There were several problems with the mother obtaining psychological and intellectual testing. After the children were removed from her home, the mother's Title XIX insurance lapsed. The mother did not reapply for insurance to cover the testing. DHS filed the wrong paperwork in an attempt to fund the testing. After DHS filed the proper paperwork, the mother obtained an incorrect address for the testing and missed her appointment. Prior to the initial permanency hearing, the mother had not completed psychological and intellectual testing.

On January 3, 2012, the mother and her boyfriend moved out of their apartment. The mother refused to explain why and refused to provide her current address to family, safety, risk, and permanency (FSRP) providers. Although the mother tested clean four times previously, the mother missed nine drug testing dates from December 13, 2011 to January 26, 2012.

On February 10, 2012, the juvenile court held an initial permanency hearing. The juvenile court found,

[The] mother has been slow to engage in services. In some cases, she has been completely unengaged. She has failed in all drug testing efforts. Until a recent family team meeting she was apparently avoiding the FSRP provider because she felt she was being talked down to. Her housing situation continues to be unstable and her boyfriend has been totally uncooperative.

The juvenile court extended the permanency time for an additional three months “to give the mother one last opportunity to fully invest in the services that are being provided to her so that she can make the necessary changes to be a competent parent.”

On February 20, 2012, the mother attended psychological and intelligence testing. The mother left the session early because she had a stomach ache. The mother called to reschedule the appointment but failed to appear for the rescheduled appointment because she did not have transportation. The mother completed psychological testing on March 5, 2012.

On March 23, 2012, the State filed a petition for termination. The petition stated the State provided FSRP services, visitation, family team meetings, family support conferences, substance abuse evaluations, substance abuse treatment, drug testing, mental health evaluation, mental health counseling, and medication

management. Despite the offer of such services, the State alleged the mother had not remedied the circumstances leading to the children's removal and it was not in the children's best interest to return to the mother's custody.

On April 16, 2012, DHS received the mother's psychological and intelligence report. The report indicated the mother had limited abstract thinking ability and was within the borderline range of intellectual functioning. The mother did not complete the psychological evaluation because she felt there were too many questions. The report recommended, in part, the mother seek mental health counseling. On May 2, 2012, the mother attended her first mental health therapy session since completing her mental health evaluation on October 6, 2011.

On May 9, 2012, the court held a termination of parental rights hearing. The father appeared by his attorney. The mother and her attorney were present at the start of the hearing. Prior to the hearing, the mother waived her right to be present on the record and left the courtroom without further explanation and against the juvenile court's recommendation.

During the termination hearing, the children's guardian ad litem and the DHS worker responsible for supervising the children's case recommended terminating both the father and the mother's parental rights. The DHS worker testified, "There's been minimal participation in the services since the children's removal. There have been numerous services offered and the only consistent service that [the mother] has taken advantage of is visitation with her daughters."

The juvenile court found,

Throughout these proceedings, the only service that [the mother] has chosen to be involved in is visitation. She has been given opportunity after opportunity after opportunity to gain further parenting skills, to address her mental health needs, to address to substance abuse problems, and to engage in counseling about her personal and relationship problems.

She has had the benefit of a skilled and knowledgeable provider. [The DHS provider], whose very credible testimony is most persuasive in this matter, did everything she reasonably could do to engage [the mother] in services. She took into account [the mother's] special needs, including her educational deficits. She worked very hard to help [the mother] calendar her appointments. She offered to transport her on many occasions to those appointments. She did everything she could have done to assist [the mother] in regaining custody of her children.

Since their placement in foster care the children have blossomed. They have become bonded with their foster parents, who are willing to adopt them. They have been integrated into that home and have finally found two adults whom they can look to for their care and who can provide a loving, nurturing environment. It is clearly in the best interest of the children to continue in that home.

On July 3, 2012, the juvenile court terminated the mother and the father's parental rights. The mother now appeals.

I. Standard of Review

We review termination of parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). While we give weight to the juvenile court's findings of fact, especially when assessing the credibility of witnesses, we are not bound by those findings. *Id.*

II. Analysis

To determine whether termination of parental rights is proper, we first analyze whether statutory grounds for termination exist under Iowa Code section 232.116(1). *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Next, we determine

whether it is in the children's best interest to terminate parental rights and whether any other factor, such as the closeness of the parent-child relationship, weighs against termination. See Iowa Code § 232.116(2), (3); *P.L.*, 778 N.W.2d at 40.

The mother does not challenge whether statutory grounds exist to terminate her parental rights. Nor does the mother allege termination is not in the children's best interest. Thus, the mother concedes these issues on appeal.

The only issue in this case is whether the State made reasonable reunification efforts. The State has a duty to make reasonable efforts to reunite parents with their children before terminating parental rights. Iowa Code § 232.102(7), (10)(a). The primary focus in assessing reasonable reunification efforts is the children's best interest with an emphasis on finding a permanent home for the children as early as possible. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). "The reasonable efforts requirement is not viewed as a strict substantive requirement of termination." *Id.*

The mother argues DHS was responsible for a delay in the mother's court-ordered psychological and intelligence testing. The mother contends this delay prevented the State from incorporating the testing results into reunification efforts. The mother argues this delay amounts to the State failing to provide any reasonable reunification services.

The mother failed to follow through with the October 6, 2011 mental health evaluation recommendations. The mental health evaluation recommendations

were aimed at addressing the very concerns contained in the delayed psychological report about which the mother now complains.

The State offered numerous services to the mother to work toward reunification. The State tailored its appointment scheduling approach to account for the mother's cognitive abilities. The DHS case worker testified she could not have simplified the services for the mother any further. The DHS case worker made every reasonable effort to help the mother regain custody of the children. Despite these efforts, the mother failed to follow through with many of the services on a consistent basis.

This case first came to the State's attention when the youngest child was born with methamphetamine in her system. During a subsequent welfare check, authorities found the children in filthy living conditions with no running water or electricity. The children had to defecate in buckets and were denied medical care to the point their teeth were rotting out of their mouths. Police found methamphetamine in the home, the mother admitted to using methamphetamine and marijuana, and the mother tested positive for methamphetamine.

Despite serious concerns about the mother's drug use and living conditions, the mother missed nine drug tests and refused to disclose her current address for the five months leading up to the termination hearing. The children must not be made to await their mother's maturity any longer. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We find the State made reasonable efforts to reunite the children with the mother. Accordingly, we affirm.

AFFIRMED.