

IN THE COURT OF APPEALS OF IOWA

No. 3-278 / 13-0216
Filed March 27, 2013

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

**D.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Cerro Gordo County, Annette Boehlje, District Associate Judge.

A mother appeals from the order providing for visitation between half siblings. **AFFIRMED.**

Sarah Reindl, Mason City, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee State.

Mark Young, Mason City, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

A mother appeals from the juvenile court order requiring visitation between half siblings. She contends the court (1) lacked jurisdiction over the two half siblings who had not been adjudicated children in need of assistance, (2) violated “the common law and fundamental liberty interests” of the parents in regard to their children, (3) erred in determining the child has a right to sibling visitation, (4) erred in finding visitation was in the child’s best interest, (5) erred in finding forced visitation with the child was in the best interest of the two half siblings, (6) erred in not finding there was good cause for termination of the mother’s parental rights to the child, (7) erred in denying her request to reopen the record to admit an affidavit, (8) erred in not requiring the State or guardian ad litem to file a petition for visitation or otherwise specify what relief would be sought, and (9) made findings of fact not supported by the record. We affirm.

I. Background

In the year prior to the mother requesting the State’s involvement with this child, the mother and stepfather¹ placed the child with Francis Lauer Youth Services for two and a half months and in Bremwood Residential Treatment Center for an additional six and a half months. The child, who is diagnosed with attention-deficit hyperactivity disorder, oppositional defiant disorder, bipolar disorder, depression, hypothyroidism, and growth hormone deficiency, also participated in behavioral health intervention services for several months. In July 2012 the State filed a petition to have the child found to be a child in need of assistance under Iowa Code section 232.2(6)(k) (parent “for good cause desires

¹ The mother and stepfather have two children, aged eleven and five.

to be relieved of the child's care and custody") and (/) (child "for good cause desires to have the child's parents relieved of the child's care and custody") (2011). The mother requested the child be placed in foster care and also requested her parental rights be terminated. She also filed a written consent to termination of her parental rights. The court adjudicated the child in need of assistance in August.

Following a dispositional hearing in late September, the court found the child was doing well in foster care but could not be returned to the home of the mother or father. The court continued the child's placement in foster care and ordered participation in services. A review hearing was scheduled for January 2013. Prior to the review hearing, the State filed a report to the court recommending the child continue in foster care and the county attorney file a petition to terminate the mother's and father's parental rights.

At the January review hearing, the court reviewed the dispositional order and considered the request from the child and the State for visitation between the child and the two half siblings. The court then issued two orders. The review order confirmed the child was in need of assistance and continued her placement in family foster care. The court found the mother had refused to participate in services to reunite with her daughter. In a separate order the court concluded it had jurisdiction and provided for monthly supervised visitation between the child and the two younger half siblings for at least two hours. The visits are to be supervised by the department of human services, the child's therapist, the foster parents, the child's grandmother, or the mother and stepfather. The mother and stepfather are also authorized to attend any visits if they wish. The mother filed a

motion to reconsider, asserting the court did not address her contention the court lacked jurisdiction over the two children who had not been adjudicated children in need of assistance. The court denied the motion. The mother appeals.

II. Scope of Review

Our review is de novo. Iowa R. App. P. 6.907; *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We review both the facts and the law and adjudicate rights anew as to those issues properly preserved and presented. *In re D.L.*, 401 N.W.2d 201, 202 (Iowa Ct. App. 1986). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995).

III. Merits

Jurisdiction. The mother contends the court “lacked jurisdiction and authority” to order the two non-adjudicated children to participate in visitation with their older half sibling. She cited an unpublished court of appeals decision in the review hearing, which the court distinguished because it dealt with termination of parental rights and significant allegations of abuse. The court determined it had authority, under Iowa Code section 232.102(10)(b) (2013), to regulate family-centered services, including maintaining the child’s connections to family. The court also cited section 232.108, which deals with sibling visitation and the efforts the State must make to maintain the sibling bond.

We agree with the juvenile court’s understanding of our unpublished opinion and also note an unpublished opinion is not “controlling legal authority.” See Iowa R. App. P. 6.904(2)(c). We also agree with the court’s conclusion

section 232.102(10)(b) and 232.108 clearly contemplate authority for the juvenile court to exercise jurisdiction over the entire family. We conclude the juvenile court had jurisdiction and authority to order sibling visitation.

Parental Common Law Rights and Fundamental Liberty Interests. The mother contends the court's visitation order invades a custodial parent's common law veto power over visitation between a child and all other third parties. See *Lihs v. Lihs*, 504 N.W.2d 890, 892 (Iowa 1993). She also contends she has a fundamental liberty interest in parenting her children that is protected against unwarranted State intrusion. See *id.*

We find nothing in the transcript of the hearing or the visitation order to indicate this issue was either raised in or decided by the juvenile court. "We have repeatedly held matters not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal." *In re S.V.G.*, 496 N.W.2d 262, 264 (Iowa Ct. App. 1992); see also *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting "issues must ordinarily be both raised and decided by the district court before we decide them on appeal"). Therefore, we do not address this issue.

Child's Right to Sibling Visitation. The mother contends there is no statutory or constitutional right to half sibling visitation. This issue was neither raised in nor decided by the juvenile court. It is not properly before us; therefore, we do not address this issue.

Child's Best Interests. The mother contends visitation was not in the child's best interests. She argues the child will never be reunited with the family and the child should move forward and not be subject to repeated rejection by

the family. The juvenile court expressly found visitation was in the child's best interests and "[t]here is no benefit, and only harmful consequences, to severing the bond [between siblings] at this time."

Iowa Code section 232.108 assumes visitation between siblings is in their best interests unless the court makes an affirmative determination "by clear and convincing evidence" visitation "would be detrimental to the well-being of the child or a sibling." See Iowa Code § 232.108(4). This section repeatedly refers to efforts to maintain relationships between siblings, even after a sibling is out of the home or has been adopted following termination of parental rights. See, e.g., *id.* § 232.108(1), (2), (4), (5), (6), (7). The foster parent testified how much the child wants visitation and a continued relationship with the half siblings. The child's therapist opined "seeing and spending time with" the half siblings "would be a great help" for the child, as well as "very helpful" to the child in developing positive relationships. The trial court found the child's mother not to be credible when she stated the younger girls are afraid of their sister and did not want to see her. We defer to the trial judge's findings and find visitation is in the child's best interests. See *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008) (stating we consider both the child's immediate and long-range interests).

Siblings' Best Interests. The mother contends forced visitation is not in the best interests of the half siblings. She argues the child was aggressive, posed a threat to them, and they do not have good memories of the child. She also basically restates her jurisdiction and authority argument, stating "it is shocking and utterly abhorrent that a court would give strangers the power to

have control and dominion over” the half siblings, and the parents’ right to determine who their children spend time with should be respected.

The juvenile court found no credible evidence the half siblings do not want to see their sister or are afraid of her. The court also found no credible evidence of past abuse or harm of the younger children by the child. We have already noted the overall thrust of section 232.108 to maintain sibling relationships absent clear and convincing evidence it would be detrimental. We agree with the juvenile court’s credibility assessments and find visitation between the children is in their best interests. For the reasons set forth in our disposition of the mother’s first claim, we do not address her rephrased argument concerning jurisdiction and authority.

Termination of Parental Rights. The mother desires to have her parental rights terminated and filed a written consent to termination in August 2012. She contends the court erred in not granting her request for termination.

The court noted the mother’s position on termination in the dispositional order, but determined the child’s placement in foster care was the least restrictive appropriate placement. The mother did not file a motion to reconsider or appeal from the court’s tacit denial of her request for termination.

Neither the review order nor the visitation order directly addresses any request by the mother for termination of her parental rights. The closest the visitation order comes is a mention of the “child in need of assistance process.” There was no petition for termination before the court. We conclude this issue is not properly before us.

Reopening the Record. The mother contends the court erred in denying her request to reopen the record to admit an affidavit. The mother cites no authority for this issue. See Iowa R. App. P. 6.1401—Form 5 (requiring “supporting legal authority” for each issue presented; see *also* Iowa R. App. P. 6.903(2)(g)(3) (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”). This issue is not properly before us.

Petition for Visitation or Other Specifics of Relief Requested. The mother contends the court erred in not requiring the State or guardian ad litem to provide any advance notice of what specifically was to be sought at the hearing. She argues she understood visitation would be sought, but the State and guardian ad litem “discussed opinions and made allegations outside the scope of the hearing.” This claim is unsupported by any citation to authority and is too general for our review.

Erroneous Findings of Fact. The mother contends the juvenile court “abused its discretion and obviously crafted its opinion to achieve an outcome rather than considering the evidence and the record,” and the court’s findings are “contradicted by objective evidence.” The mother cites no authority for this claim and does not list any findings or conclusions she disagrees with. See Iowa R. App. P. 6.1401—Form 5 (requiring “findings of fact or conclusions of law with which you disagree” for each issue presented). This claim is unsupported by any citation to authority and is too general for our review.

For the reasons set forth above, we affirm the order for sibling visitation.

AFFIRMED.