

IN THE COURT OF APPEALS OF IOWA

No. 6-392 / 06-0594
Filed May 24, 2006

**IN THE INTEREST OF R.B. and R.B.,
Minor Children,**

L.J., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate Juvenile Judge.

A mother appeals from a permanency order continuing placement of her minor children in foster care. **AFFIRMED.**

Cathleen Siebrecht of Siebrecht & Siebrecht Law Firm, Des Moines, for appellant mother.

J. Michael Mayer, Des Moines, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Annette Stanley, Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor children.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

Lunetha appeals from a permanency order in Child in Need of Assistance (CINA) proceedings continuing placement of two of her six children in foster care.¹ She seeks a reversal of the permanency order and requests the immediate return of the two children to her care.

I. Background Facts and Proceedings

Lunetha is the mother of six children, including Roshonda, born in 1992, and Roshonique, born in 1991.² In September 2004 two younger children were removed from Lunetha's care after they were left alone in the care of eleven-year-old Roshonda, a special needs child. Roshonda, Roshonique, and another sibling were removed from Lunetha's custody in November 2004, following her incarceration for possession of marijuana and manufacture and delivery of controlled substances. The children were adjudicated CINA and placed in foster care.

At a dispositional hearing in December 2004, the juvenile court ordered that the children remain placed outside the home due to Lunetha's unresolved substance abuse and mental health issues. The court continued the out-of-home placement following review hearings in February and May of 2005.

Following a permanency hearing in October 2005, the court entered a permanency order pursuant to Iowa Code section 232.104(2)(b), concluding it

¹ The girls' father was initially involved in the case, and at one point requested the girls be placed with him. He subsequently failed to respond to calls and letters from DHS regarding a home study, and later reported he did not have room for the girls in his home.

² Lunetha's oldest child was removed from the home as a result of delinquency proceedings. Lunetha has separately appealed the termination of her parental rights with regard to three younger children.

was reasonably likely the girls could return to Lunetha's care within six months. The case permanency plan called for monthly staffings with specific goals for Lunetha to complete each month.

The State filed a petition to terminate parental rights on January 18, 2006. Following a hearing, the court entered a permanency order on March 27, 2006. The court made the following findings:

[Lunetha] has refused to take any responsibility for her problems and those of her children. She believes she does not need anyone to tell her how to raise her children. She refuses to acknowledge that her children have mental health problems and asserts any problems they have are because of removal from her care. She testifies she believes they could be returned to her custody immediately.

The court determined "Roshonda and Roshonique cannot be returned to the custody of their mother at any time in the near future." However, the court concluded termination would not be in the children's best interest, and that compelling reasons existed to maintain the parent-child relationship, including: "the ages of the children, the bond with their mother, and the fact that Roshonda and Roshonique do not wish to be adopted." The court's order continued the children in custody of the Iowa Department of Human Services (DHS) for placement in foster care, pursuant to Iowa Code section 232.104(2)(d). Lunetha appeals.

II. Standard of Review

Our review is de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We give weight to the juvenile court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g). The best interests of the children control the court's decision in

granting a permanency order. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). There is a rebuttable presumption that parental custody serves the children's best interests. *Id.*

III. Discussion

Lunetha argues the juvenile court erred in refusing to return Roshonda and Roshonique to her home because she has stable and appropriate housing and employment, has been consistent in visits with the children, is committed to reunifying with them, and is ready and willing to assume their immediate care.

Lunetha's ongoing substance abuse and her failure to follow through with recommended services to address the problem support the juvenile court's permanency order in this case. Lunetha tested positive for marijuana at the original removal and continued to test positive for a period of time thereafter. She remains on probation after her conviction for possession of marijuana with intent to deliver. Her compliance with requests to participate in drug testing has been sporadic. She tested positive for cocaine on two occasions in January 2006, although she denied using cocaine. During a visit to her home in January 2006, the DHS in-home worker observed marijuana on the table in Lunetha's apartment. She denied the marijuana was hers and did not provide a drug test that day as requested.

At the permanency hearing, Lunetha denied using drugs or having a substance abuse problem at the present time. The juvenile court did not find Lunetha's denial credible, considering her history of noncompliance with drug testing and her substance abuse history. We give deference to the court's credibility assessment. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997).

Roshonda and Roshonique cannot safely return to their mother's home until Lunetha acknowledges and addresses her substance abuse problem.

In addition to her substance abuse issues, it is clear from the record that Lunetha has failed to follow through with appointments and therapy. She has not been truthful with providers, particularly as it relates to who is in her home and drug testing. DHS providers report she has trouble parenting the children and denies problems with her parenting skills. Visits between Lunetha and the children have not been able to move to semi-supervised or unsupervised due to the presence in the home of men about whom Lunetha refuses to provide information, unsafe conditions in the home, and Lunetha's continued dishonesty.

The therapist working with Roshonda and Roshonique testified the girls are "just kind of lingering" and "need some sort of stability and permanence in their lives." She noted the girls "see their mom as a fun peer," and recommended a planned permanent living arrangement for the girls in their current foster home, where they have done well.

After considering the children's best interests and giving due deference to the juvenile court's credibility assessments, we conclude the juvenile court did not err in ordering Roshonda and Roshonique to remain in foster care.

AFFIRMED.