

IN THE COURT OF APPEALS OF IOWA

No. 6-476 / 06-0414
Filed July 12, 2006

**IN THE INTEREST OF K.R.W.,
Minor Child,**

**A.R.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Lee (South) County, Gary Noneman, District Associate Judge.

A mother appeals from a juvenile court order that transferred custody of her delinquent daughter to the Iowa Department of Human Services for placement at a foster group facility. **AFFIRMED.**

Thomas Marion of Marion Law Office, Keokuk, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael Short, County Attorney, and David Andrusyk, Assistant County Attorney, for appellee State.

Kendra Abfalter, Keokuk, for minor child.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Angela appeals from a juvenile court order that transferred custody of her twelve-year-old delinquent daughter, Koral, to the Iowa Department of Human Services (DHS) for placement at a foster group facility. She contends the court erred in placing Koral in a residential facility instead of the less restrictive care of her mother. Angela also maintains the court erred in determining reasonable efforts had been made to prevent the need for out-of-home placement. We affirm.

I. Background Facts & Proceedings

On August 23, 2005, Koral was accused of two counts of disorderly conduct and one count of interference with official acts for hitting her sister while she was at school and cursing and refusing to leave when a police officer ordered her to do so. On August 24 Koral was accused of one count of disorderly conduct and one count of interference with official acts for cursing and screaming at her mother and grandmother at her home and refusing to cooperate with police officers when her grandmother called them to the scene.¹ Koral was placed at the South Iowa Area Detention Center in Montrose, Iowa. Following a detention hearing held August 26, the juvenile court ordered Koral to be placed with her mother, subject to supervision by a juvenile court officer (JCO).

On October 31 the court held an admission/denial hearing on the delinquency charges and was advised that Koral had failed to cooperate in an outpatient evaluation. Koral denied the allegations of the delinquency petition,

¹ Koral cursed at the police officers and had to be physically placed in the patrol car and restrained for transportation to the police station.

and a hearing was scheduled. On November 7 Angela told the JCO Koral refused to attend school and had violated house arrest. As a result, Koral was again placed at the South Iowa Area Detention Center.

The court held an adjudicatory hearing on November 17. Koral admitted to one delinquent act of disorderly conduct and one delinquent act of interference with official acts pursuant to a plea agreement.² The court lifted the detention order and placed custody of Koral with her mother under the supervision of the JCO. The court ordered an outpatient evaluation, placed Koral on house arrest, and ordered her to attend school, day treatment, JCO appointments, and submit to an evaluation. By agreement of the parties, the disposition hearing was continued.

Koral was caught smoking by a school liaison officer on November 18. When the liaison confiscated her cigarette lighter and cigarettes, Koral yelled obscenities at her.³ The juvenile court again placed Koral at the South Iowa Area Detention Center on November 23. The court continued the detention of the child following a hearing held November 28.

The court lifted the detention order on December 22 and placed custody of Koral with her mother. The court conditioned the home placement on Koral's attendance at school, day treatment, and JCO appointments and compliance with all the conditions of probation set by the JCO. Koral completed an outpatient evaluation by Moon-Baird Assessment Services. The evaluation

² Both delinquent acts are simple misdemeanors.

³ Smoking violated a predisposition agreement signed by Koral and her mother on November 17.

recommended returning Koral to her mother's care, but placing her in a residential treatment facility if she failed to comply with all rules and requests.⁴

On February 21, 2006, Koral refused to go to school, and the school liaison had to pick her up at home and deliver her to school. Later that day, Koral was late to physical education class and had an altercation with the physical education teacher. Koral called the teacher a "bitch" and a "fucking bitch" and flipped the teacher off. When Koral was taken to the principal's office, she began yelling and screaming, and the school police officer charged her with disorderly conduct. Once again, Koral was taken to the South Iowa Area Detention Center.

Following a modification and detention hearing, the court ordered custody of Koral to be transferred to DHS for the purposes of placement at a foster group facility subject to continued supervision by her JCO.⁵ Angela now appeals.

II. Scope & Standards of Review

We review the juvenile court's fact findings and conclusions of law de novo. *In re C.T.*, 521 N.W.2d 754, 756 (Iowa 1994). We give weight to the juvenile court's fact findings, especially when considering credibility of witnesses, but are not bound by them. *Id.*

III. Least Restrictive Placement

Angela contends the court erred in placing Koral in a residential facility instead of her home. Angela also maintains the court illegally transferred

⁴ The evaluation also recommended an evaluation of Koral at the University of Iowa Behavioral Clinic for a possible nonverbal learning disability.

⁵ Angela was unable to attend the entire February 22 hearing, so a second hearing was held on March 2. The court heard testimony from Koral's mother and grandmother and again ordered custody of Koral to be transferred to DHS for placement at a foster group facility.

custody of Koral to DHS under Iowa Code section 232.52(2)(e) (2005).⁶ We find no merit in either argument.

The record supports the conclusion that placement with DHS for the purposes of foster group care represented the least restrictive placement available to the juvenile court. The court returned Koral to her mother's care following numerous detentions at the South Iowa Area Detention Center. On each occasion, Koral continued to exhibit out-of-control behavior and physical aggression that interfered with her education. The court explained it had attempted all the nonplacement options available for Koral. We find the court acted reasonably in adopting the recommendations of the evaluator and Koral's JCO to transfer custody of Koral to DHS for placement in foster group care.

We also reject the argument that the placement made by the juvenile court was illegal.⁷ Although the court did not specify the code section under which it transferred custody of Koral to DHS, the State argues placement was clearly

⁶ Iowa Code section 232.52(2)(e) provides that placement at the state training school or other facility is permitted if three of the following four conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

⁷ We note that Angela did not challenge the legality of the court's order in juvenile court.

authorized under section 232.52(2)(d)(3).⁸ We agree. Section 232.52(2)(d)(3) specifically authorizes the court to transfer legal custody of a child to DHS for the purposes of foster care, and it authorizes the court to prescribe the type of placement that will best serve the minor child. That is what happened here. We find no illegality occurred in the court's order.

IV. Reasonable Efforts

Angela claims the court erred in determining reasonable efforts had been made to prevent the need for out-of-home placement because Koral had not been assessed by the University of Iowa Behavioral Clinic as recommended by the Moon-Baird evaluation. Angela raises this argument for the first time on appeal. Accordingly, she has waived this issue. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (holding a parent must timely demand additional or different services to preserve error on the issue of whether DHS made reasonable efforts to prevent a child's removal from the home). Even if error had been preserved on this issue, DHS made reasonable efforts to keep Koral in her mother's home. These efforts included probation, day treatment, detention placement, mental evaluations, house arrest, educational evaluation, community service work, and school-based services. The court did not transfer custody of Koral to DHS until all of these services failed to rectify Koral's severe behavior problems.

⁸ Iowa Code section 232.52(2)(d)(3) provides that the court may transfer the legal custody of a child to:

The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

V. Conclusion

We conclude the court acted reasonably and legally in transferring custody of Koral to DHS for placement in foster group care. DHS made reasonable efforts to keep Koral in her mother's home. We affirm the order of the juvenile court.

AFFIRMED.