

IN THE COURT OF APPEALS OF IOWA

No. 6-855 / 06-1397
Filed October 25, 2006

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

J.Y., Mother,
Appellant.

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop,
Associate Juvenile Judge.

J.Y. appeals from the termination of her parental rights concerning her
children B.R. and A.R. **AFFIRMED.**

John Swain, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Jennifer Miller, County Attorney, and Susan Klaessy, Assistant
County Attorney, for appellee State.

John Haney, Marshalltown, for minor children.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.***I. Background Facts and Proceedings.***

J.Y. is the mother of seven-year-old B.R. and six-year-old A.R. In October 2004 J.Y. was arrested and charged with sexually abusing B.R. When she was arrested, J.Y. placed the children with her mother, D.B. J.Y. was subsequently convicted of sexual abuse in the third degree, child endangerment, and an unrelated forgery. She was sentenced to serve three consecutive terms of incarceration not to exceed seventeen years. She has been continuously incarcerated since her arrest. J.Y.'s projected release date is July 31, 2012. She will be eligible for parole in May 2007.

In addition, Iowa Department of Human Services (DHS) investigators determined that J.Y. had a substantial history of drug abuse and A.R. tested positive for marijuana and cocaine at birth. Investigators also determined that J.Y. failed to provide a safe and stable home environment for her children because she moved frequently and left them with inappropriate caretakers.

On December 9, 2004, the juvenile court adjudicated B.R. and A.R. children in need of assistance under Iowa Code sections 232.2(6)(c) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and 232.2(6)(n) (parent's drug abuse results in child not receiving adequate care). The DHS case plan recommended J.Y. complete substance abuse treatment, provide clean drug tests, abide by a no-contact order with the children entered in her criminal case, and obtain mental health and substance abuse evaluations after her discharge from incarceration. In a January 14, 2005 dispositional order the court concluded that J.Y. was still incarcerated and there

were no services available for J.Y. through the Marshall County Jail. The court continued the children's placement with D.B.

The record made at the November 17, 2005 permanency hearing indicates the children continued to be appropriately cared for by D.B. The children were receiving services through an in-home provider and a local mental health center. At the hearing, J.Y. claimed she sent letters to B.R. and A.R. and that those letters were being kept from the children. Their caseworker explained that the children's therapist did not believe the children should be exposed to correspondence from their mother because of their fear of their mother. The court instructed the caseworker to consult the staff where the children were receiving mental health treatment to determine if the children should receive correspondence from their mother. The court concluded that, based upon evidence presented at the hearing, it would not be in their best interests for the children to receive correspondence at that time. The court also determined that termination of parental rights was not then in the children's best interests because the children were placed with a relative.

In April 2006 the State filed petitions to terminate J.Y.'s parental rights concerning B.R. and A.R. under Iowa Code sections 232.116(1)(b) (abandonment), 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of the last eighteen months, and child cannot be returned home), 232.116(1)(j) (child CINA, parent imprisoned for crime against child (or unlikely to be released

for five or more years)), and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

On October 20, 2004, the juvenile court terminated J.Y.'s parental rights concerning both children under Iowa Code sections 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of the last eighteen months, and child cannot be returned home), 232.116(1)(j) (child CINA, parent imprisoned for crime against child (or unlikely to be released for five or more years)), and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

On appeal, J.Y. makes the following argument:

- I. The juvenile court erred in finding the Department of Human Services made reasonable efforts to return the children to their mother.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the children. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Reasonable Efforts.

The gist of J.Y.'s reasonable efforts argument is that the DHS failed in its duty to make reasonable efforts to reunify J.Y. and her children by failing to share the letters J.Y. sent to the children. We disagree.

The DHS is required "to 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.” Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d at 493. This requirement involves providing “services to a parent before termination proceedings can be instituted.” *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). “Reasonable efforts are aimed at both preventing and eliminating the need for removal.” *Id.* “[W]hat constitutes reasonable services varies based upon the requirements of each individual case.” *Id.* “Generally, in making reasonable efforts to provide services, the State’s focus is on services to improve parenting.” *Id.* “The concept of reasonable efforts broadly includes ‘a visitation agreement designed to facilitate reunification while protecting the child from the harm responsible for the removal.’” *Id.* (quoting *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996)). When assessing reasonable efforts, the safety and health of the children “shall be the paramount concern.” Iowa Code § 232.102(10)(a). “[I]n making reasonable efforts to provide services, the State need not search for unavailable services.” *In re C.H.*, 652 N.W.2d at 147. Reasonable efforts is not “viewed as a strict substantive requirement of termination.” *In re C.B.*, 611 N.W.2d at 494. “Instead the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts.” *Id.*

Here the issue of the DHS’s failure to share J.Y.’s letters with the children was first raised by J.Y. at a November 17, 2005 permanency hearing. In reply to a DHS inquiry concerning advisability of sharing J.Y.’s letters with the children, B.R.’s therapist stated:

At this juncture, I would be very reluctant to introduce any type of “communication” that would hinder the growth process. She has made some progress in her mental and emotional health that

any reminders of the past would only stifle the growth that has been obtained in this fragile life. [B.R.] needs to be sheltered from, at this time, "living" in the past.

We also note that J.Y.'s correctional counselors informed the DHS that inmate contact with victims was not allowed. Under these circumstances we conclude the DHS's decision not to share J.Y.'s letters with the children did not result in a failure to make reasonable efforts. In the absence of any further challenge to the sufficiency of the evidence supporting termination of J.Y.'s parental rights on any of the grounds relied on by the juvenile court, we affirm the juvenile court's decision terminating J.Y.'s parental rights concerning B.R. and A.R.

AFFIRMED.