

IN THE COURT OF APPEALS OF IOWA

No. 7-341 / 07-0586

Filed May 23, 2007

IN THE INTEREST OF C.A.H., Minor Child,

R.A.H., Mother,
Appellant.

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

A mother appeals from the order deferring permanency and continuing guardianship of her daughter. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

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

Mary E. Kennedy, Waterloo, for father.

Sheila O'Laughlin of Snow, Knock, Sevcik & Hinze, Cedar Falls, guardian ad litem for minor child.

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

SACKETT, C.J.

Ramah, the mother of seventeen-year-old Chandra, appeals from the order deferring permanency for six months and continuing Chandra's guardianship with the Department of Human Services for placement at the Iowa Juvenile Home in Toledo. She contends the court (1) "erred that the child would continue to suffer adjudicatory harm in the home of the mother for the same reasons for which the child had been adjudicated a child in need of assistance" and (2) "failed to dismiss the action given the child is not receiving services for which she was adjudicated a child in need of assistance." We affirm.

I. Background

Chandra was found to be in need of assistance in May of 2004 under Iowa Code section 232.2(6)(f) (2003) (parent unable or unwilling to provide needed treatment for a serious mental illness) following her involuntary mental health commitment under chapter 229. She initially was placed at the juvenile home for evaluation. She was diagnosed with conduct disorder, polysubstance abuse, and mood disorder with antisocial traits. A dispositional order transferred Chandra to the care of the department for group foster care placement, but with mittimus withheld, allowing her to remain at home and participate in outpatient treatment. Mittimus later issued and she was placed in group care from August of 2004 through late June of 2005. After Chandra successfully completed services while in group care, she was granted a trial home placement. Her success was short-lived. She ran away from home in September of 2005, was later found in Arkansas, and continued run-away incidents from detention, shelter, and group foster care through mid-November. In December, disposition

was modified to placement in a psychiatric medical unit for children, from which she fled in mid-January of 2006. Chandra again was placed in the juvenile home.

A staffing recommendation in late July was for Chandra's discharge to treatment-level family foster care by September 1 and eventual return home to her mother. After contacting approximately seventeen foster parents, the department was unable to find a suitable home. In late August Chandra filed a motion to modify her placement at the juvenile home or to dismiss the juvenile case. Following a modification hearing in late November, the court determined reasonable efforts had been made to provide services and obtain a family foster home, no significant change in circumstances had been shown, placement in the juvenile home was the least-restrictive alternative, and such placement was in Chandra's best interests. This court affirmed Chandra's appeal from that order. *In re. C.A.H.*, No. 06-2052 (Iowa Ct. App. April 11, 2007).¹

In January of 2007 a permanency hearing was held. In its February 19 order deferring permanency, the court found:

The court can find nothing in this record that would support Chandra's placement at her mother's home other than the mere desire to "give Chandra a chance." There is nothing in Chandra's day-to-day response in the highly structured program of the Iowa Juvenile Home that gives any indication that Chandra is making significant change or desires to do anything to achieve program goals. . . .

. . . .

Chandra clearly has the ability to successfully complete substance abuse programming and successfully graduate from high school. When either of these goals are achieved, the court

¹ Ramah's appeal was dismissed by the supreme court for failure to conform to rules of appellate procedure.

would consider that sufficient demonstration of Chandra's ability to change and achieve goals in a less restrictive setting.

The court continued Chandra's placement at the juvenile home, noting it would consider a less-restrictive placement after Chandra successfully completes substance abuse treatment or graduates from high school. The court deferred permanency and scheduled a review in August. The court amended its order to provide for home visits, but denied a request to change Chandra's placement, finding no material and substantial change in circumstances. Ramah appeals.

II. Scope of Review

We review child in need of assistance proceedings de novo. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound them. Iowa R. App. P. 6.14(g).

III. Merits

The claims raised in this appeal are identical to those raised in the appeal from the order denying Chandra's request for modification of the dispositional order. The petition on appeal is virtually identical to the previous petition. The only change in circumstances between the December order and the February order is that a psychologist at the juvenile home, Dr. Crowley, conducted a psychological evaluation of Chandra. Her report indicated placement in the substance abuse program at the juvenile home was "highly appropriate." After contact with Ramah, Dr. Crowley summarized her report to indicate the least restrictive placement in which Chandra could be successful would be the appropriate placement.

Dr. Crowley was the only witness at the hearing. She testified she changed the placement recommendation to allow for home placement because Ramah said she was willing to have supervision and family therapy and because Chandra “essentially was saying she would not work with the program [at the juvenile home].” The following interchange between Chandra’s guardian ad litem and Dr. Crowley is telling:

Q. Now if I understand your testimony earlier, you think that Iowa Juvenile Home has a limited ability to rehabilitate Chandra; is that correct? A. No. I think we have the ability to. I do not believe Chandra has a willingness.

Q. So in effect—but she certainly has a willingness to go home and be rehabilitated at home, right? A. She has the willingness to go home. I don’t know if she has a willingness to be rehabilitated at all.

Dr. Crowley testified Chandra might be able to succeed briefly at home, but would “have difficulty maintaining outside of a less restrictive environment for more than a few months.” The problem is not “serious mental issues,” but rather a risk of substance abuse and “that she would, again, fail to follow rules. She would skip school, stay out all night, back on drugs.”

Ramah contends that, if the mental health basis for Chandra’s adjudication has been resolved, the court either should return Chandra to her care or dismiss the case.

A. Home Placement. Ramah first seeks Chandra’s return to her care.

Iowa Code section 232.104(2) provides:

2. After a permanency hearing the court shall do one of the following:
 - a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

Although the court deferred entering a permanency order, the court did “enumerate the specific factors, conditions, or expected behavioral changes” that would demonstrate “Chandra’s ability to change and achieve goals in a less restrictive setting.” The initial adjudication was based on Chandra’s mental and behavioral issues, which included problem solving, coping skills, impulsivity, and her inability to follow rules or conform to structure. Ramah could not control her, and Chandra’s behavior had become self-destructive. The record reveals Chandra’s need for a structured environment remains unchanged. We affirm the court’s deferral of permanency for up to six months pending Chandra’s demonstration she has changed.

We find no merit in Ramah’s argument that a change in the language of Iowa Code section 232.2(6)(f), under which Chandra was adjudicated, supports returning Chandra to Ramah’s care. While we acknowledge Ramah’s expressed willingness to seek appropriate services for Chandra if she were returned home, we do not find support in the record for placing Chandra in a less-structured environment.

B. Dismissal. Ramah also contends the case should be dismissed because Chandra is not receiving services to correct the circumstances that led

to her adjudication. A dispositional order may be terminated prior to its expiration only if the purposes of the dispositional order have been accomplished and the child is no longer in need of supervision, care, or treatment. *In re K.N.*, 625 N.W.2d 731, 734 (Iowa 2001). Even though the evidence supports a finding that Chandra no longer has serious mental health issues, she needs supervision, care, and treatment for behavioral problems, self-destructive behavior, and potential substance abuse, and there is no indication that further treatment would not benefit Chandra or lead to accomplishment of her permanency goals. A child's continued need for assistance need not be the same need that necessitated the original removal or adjudication. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993); *In re C.M.T.*, 433 N.W.2d 55, 56 (Iowa Ct. App. 1988). We conclude dismissal is not appropriate.

AFFIRMED.