

IN THE COURT OF APPEALS OF IOWA

No. 7-674 / 07-1294
Filed October 12, 2007

IN THE INTEREST OF A.K.N.P., Minor Child,

M.R.P., Mother,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

A mother appeals from the order waiving reasonable efforts to reunify her
with her youngest child. **AFFIRMED.**

Kathryn E. Walker of Walker & Billingsley, Newton, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Steve Johnson, County Attorney, James Cleverley Jr., Assistant County
Attorney, and Sarah S. Maxwell, Student Legal Intern, for appellee.

Joanie Grife, Marshalltown, guardian ad litem for minor child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

A mother appeals from the order waiving reasonable efforts to reunify her with her sixth and youngest child, born in February of 2007. She contends the services offered have allowed her to improve her parenting and “will continue to improve her parenting so she can safely parent” her child. We consider this an interlocutory appeal and affirm.

We first address whether this is a final order or an interlocutory ruling. Final orders are appealable as a matter of right. Iowa R. App. P. 6.1(1). Interlocutory rulings can be appealed only with permission. Iowa R. App. P. 6.2.

An interlocutory order is “one that is not finally decisive of the case.” *Williams v. Bourne*, 248 Iowa 189, 194, 79 N.W.2d 751, 754 (1956). An order is interlocutory if it directs an inquiry into a matter of fact preparatory to a final decision. *In re W.D., III*, 562 N.W.2d 183, 185 (Iowa 1997). A ruling is not final if the court intends to do something further to signify its final adjudication of the case, and a juvenile court order is not final unless it disposes of all the issues. *In re C.S.*, 516 N.W.2d 851, 857 (Iowa 1994). A final judgment conclusively adjudicates all of the rights of the parties. *Rowen v. LeMars Mut. Inc.*, 357 N.W.2d 579, 581 (Iowa 1984).

Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re A.B.*, 554 N.W.2d 291, 294 (Iowa Ct. App. 1996). However, the reasonable efforts requirement may be waived in limited specific situations. Iowa Code §§ 232.102(12), 232.111(2)(a)(2) (2007).

The juvenile court’s order waiving the requirement of reasonable efforts and the mother’s motion to reopen the record did not dispose of all of the issues in this case, and it did not conclusively adjudicate the rights of the parties. Under section

232.111(2)(a)(2), it is contemplated that a subsequent hearing will be held. See *In re A.C.*, 443 N.W.2d 732, 733 (Iowa Ct. App. 1989). There can be no disposition and “final” order until after the termination hearing. See *W.D.*, 562 N.W.2d at 186.

As a juvenile court order waiving reasonable efforts is not final, an application for interlocutory appeal was required to be filed. However, the mother’s failure to file such an application is not alone grounds for dismissal. Iowa R. App. P. 6.1(4). Instead, we must consider the mother’s appeal as an application for interlocutory appeal. *Id.* The application may be granted on finding that the juvenile court’s ruling involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice. Iowa R. App. P. 6.2(1).

Prior to the implementation of the current expedited appeal process in juvenile case the supreme court said that when issues concern children’s welfare, interlocutory appeals should rarely be permitted prior to a juvenile court’s disposition. See *W.D.*, 562 N.W.2d at 186. When properly preserved, the issue of the waiver of reasonable efforts may be reviewed on appeal from any subsequent termination of parental rights order. See *Cornell v. Goodfellow*, 255 Iowa 1237, 1242, 125 N.W.2d 745, 748 (1964) (holding denial of application for interlocutory appeal is not approval of the ruling, but merely a refusal to review it in advance of final judgment). However, if a juvenile court erroneously denies reasonable efforts and there is evidence that with assistance the family could stay together or be reunited, then the refusal to grant an interlocutory appeal and delay reasonable efforts being made may well be detrimental to the child or children in delaying reunification and eroding existing bonding between parent and child. If it is found on

an appeal from a termination order that reasonable efforts were erroneously denied, it may delay permanency for the child. Therefore, before refusing to grant an interlocutory appeal it is important we look at the case as put before us.

Iowa Code section 232.102(12) provides the court may waive reasonable efforts upon a finding of aggravated circumstances, as indicated by:

The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

Iowa Code § 232.102(12)(c).

In the same hearing in which the court considered the State's request to waive reasonable efforts, the court considered the State's petitions to terminate the mother's parental rights to her five oldest children. It granted the termination petitions concerning all five children. The evidence before us shows the five children were removed in October of 2003. The mother participated in substance abuse treatment. The children were returned to her care in March of 2005. By January of 2006 the mother had relapsed and was using and selling cocaine. The children were removed again. The child at issue in this appeal tested positive for cocaine at birth. Although the mother entered inpatient treatment in March of 2007, she will need to be in the program for at least eleven months. Upon her successful completion of the program, she would have to maintain sobriety, obtain suitable housing, and be able to provide for herself and her child before the child could be returned to her.

We determine the child's welfare dictates that the issue of reasonable efforts should be addressed now so the child will not see further delays. Therefore we grant an interlocutory appeal in the interest of the child.

That said, from our review of the record we find clear and convincing evidence the offer or receipt of services would not "be likely within a reasonable period of time to correct the conditions which led to the child's removal." See *id.* We affirm the order waiving reasonable efforts.

AFFIRMED.