**IN THE COURT OF APPEALS OF IOWA**

No. 7-723 / 07-1368
Filed October 12, 2007

**IN THE INTEREST OF C.W.N.,**
**Minor Child,**

**R.J.N., Mother,**
Appellant.

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Appeal from the Iowa District Court for Buchanan County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child. **AFFIRMED.**

Shawn M. Harden of Harden Law Office, Independence, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Allan W. Vander Hart, County Attorney, and Karl Moorman, Assistant County Attorney, for appellee State.

A.J. Flickinger of Craig, Wilson & Flickinger, Independence, for appellee father.

Linnea Nicol, Juvenile Public Defender, Waterloo, for minor child.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Roberta appeals the termination of her parental rights to Caleb, born in 2006. She raises the following arguments: (1) the State's proof of the grounds for termination included false testimony, (2) the evidence on the State's application to waive reasonable efforts was insufficient, (3) the juvenile court considered evidence outside the record in determining that aggravated circumstances existed to waive the reasonable efforts requirement, (4) the juvenile court should not have taken judicial notice of certain documents, and (5) the court should not have admitted several exhibits that were not a part of the underlying child-in-need-of-assistance proceedings.

As a preliminary matter, the State argues that Roberta failed to challenge the grounds for termination and, accordingly, "her arguments regarding the admission of evidence at the termination hearing are moot." We believe Roberta's arguments encompass a challenge to the evidence supporting termination. *See In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Accordingly, we will proceed to address those arguments.

***I.*** Roberta has a history of abusing illegal drugs. When Caleb was born, Roberta tested positive for methamphetamine and marijuana in her system. The child was removed from Roberta's care but was returned to her when she entered a residential treatment facility that allowed children. Caleb remained in Roberta's care after her successful discharge from the facility.

In February 2007, Roberta twice tested positive for methamphetamine in her system. On one of the occasions, Roberta told service providers that Caleb's father spiked her soda with the drug. This explanation was taken at face value.

On appeal, Roberta argues that State witnesses

> falsely testified at the Temporary Removal hearing on March 5, 2007, that the child's father had never stated or confirmed that the child's mother was exposed to methamphetamine through his beverage or his placing of methamphetamine in the mother's beverage.

As the guardian ad litem correctly points out, whether the father confirmed Roberta's explanation is immaterial because the Department of Human Services (Department) declined to seek a temporary removal of the child on the basis of that positive drug screen. An in-home therapist's testimony is instructive. When asked if she was satisfied with Roberta's explanation of the positive drug screen, she stated "I had my doubts, but I wanted to believe in Roberta and believe that she was telling the truth and that she could be trusted." When asked if a removal of the child was sought as a result of the positive test, she stated, "No." For this reason, the presence or absence of corroborating testimony from Caleb's father is immaterial.

***II.*** The State applied to waive its obligation to make reasonable efforts towards reunification. *See* Iowa Code § 232.102(12) (2007). The juvenile court granted the application but, at the same time, ordered the Department to continue furnishing several services. On appeal, Roberta argues that the guardian ad litem's evidence supporting waiver of this requirement was insufficient and was not in the record. We disagree.

Iowa Code section 232.102(12) authorizes waiver of the reasonable efforts requirement for several reasons, including the following:

> 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.

In support of this ground, the guardian ad litem offered a certified copy of a termination order in a case involving other children of Roberta. When the juvenile court asked if there were any objections to the exhibit, Roberta's attorney responded, "No." The order was admitted. We conclude that Roberta did not preserve error on her challenge to the admissibility of the document. *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us [on appeal] that was not first sung in the trial court.").

On the question of services, the order stated:

> The Department of Human Services has offered the following services to the family designed to help reduce or eliminate the adjudicatory harms present in the home: family centered services including family therapy and parent skill development, individual therapy, substance-abuse programming, random and dated May 17, 2000 urinalysis testing, protective day care, foster care support services, relative and/or family foster care for their children, and supervised visitation between the children and their parents."

The order continued, "[T]he children's mother has failed to participate in substance abuse treatment as recommended." This exhibit, therefore, confirms that Roberta was offered and received services to address her drug addiction prior to the birth of Caleb and these services were unsuccessful. This evidence, together with the evidence that Roberta returned to drug use following Caleb's birth and after inpatient treatment, supports the juvenile court's decision to waive the Department's reasonable efforts obligation.

***III.*** Roberta next contends that the court should not have taken judicial notice of several exhibits collectively marked as Exhibit A, because they were not properly signed, a witness involved in preparing some of the reports was not present to testify, and that witness had been charged with three counts of felony perjury.

A court is authorized to take judicial notice of pleadings and exhibits from a previous child-in-need-of-assistance proceeding involving the same child. *In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994). The juvenile court noted that the documents included in Exhibit A "were previously admitted in the Child in Need of Assistance case." Additionally, the evidence was admissible over hearsay objections. Iowa Code § 232.96(6). Finally, the felony charges related to a different case, Roberta's counsel was offered but declined the opportunity to present evidence that the information presented in this case was false, and the fact of the pending charges against the Department employee went to the weight rather than the admissibility of the evidence.

***IV.*** Finally, Roberta contends that the juvenile court should not have admitted State's exhibits C, D, and E because they were "reports prepared and filed in the underlying CINA case that had not been admitted as part of the underlying CINA proceeding and the author of the report did not testify at the termination hearing." Exhibit C was an updated case permanency plan. Exhibit D was a discharge summary from a service provider. Exhibit E included two letters from a service provider and the results of a urinalysis test. As noted, Iowa Code section 232.96(6) authorizes the admission of these types of documents over a hearsay objection. Additionally, a Department supervisor who signed the cover letter

accompanying two of the three exhibits was present at the termination hearing and available for cross-examination. Accordingly, we reject this argument.

We affirm the termination of Roberta's parental rights to Caleb.[1]

**AFFIRMED.**

[1] Roberta moved to strike the State's brief. As the State's response was timely served, the motion is denied. *See* Iowa R. App. P. 6.152 and Iowa R. App. P. 6.31(5) (allowing an additional three days to act when served by mail).