

IN THE COURT OF APPEALS OF IOWA

No. 7-802 / 07-1606
Filed November 15, 2007

**IN THE INTEREST OF L.R., J.R., D.R., and P.R.,
Minor Children,**

**J.K.R., Mother,
Appellant.**

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

A mother appeals from a permanency order. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Steve Johnson, County Attorney, and James Cleverly, Assistant County
Attorney, for appellee.

Richard Phelps of Phelps Law Office, Mingo, for father.

Steven Holwerda of Selby, Updegraff, Smith & Holwerda, Newton,
guardian ad litem for minor children.

Considered by Sackett, Vaitheswaran and Baker, JJ.

SACKETT, C.J.

A mother of four daughters appeals from the permanency order that continued the suspension of visitation with the two older girls and directed the State to file a petition to terminate her parental rights to the two younger girls if long-term relative care was not available. We affirm the order as to the older girls and dismiss the appeal concerning the younger two girls as interlocutory.

I. Background

The children, born in 1997, 1998, 2000, and 2002, were removed from their parents' care in 2004 based on lack of supervision. The mother worked during the day and cared for the children in the evening and night time hours. The father worked nights and cared for the children during the day time hours. The lack of supervision happened primarily when the children were in their father's care. The older two girls were placed together in one family foster home; the younger two were placed together in a different foster home. By the time of the dispositional hearing in January of 2005, the parents had separated and filed for dissolution of their marriage. By the summer of 2005, the two older girls were returned to the mother's care. She exercised visitation with the two younger girls and was moving toward reunification with them also. The father had remarried and had visitation with the children.

After the two younger girls spent the 2006 spring break in the mother's home, one of them reported being touched inappropriately by an older sibling. The two older girls were moved from their mother's care to their father's. There had been no problems with sexual abuse issues prior to this time. An investigation ultimately revealed the two older girls had been sexually touched by

another child in one of their foster home placements. The mother had both supervised and unsupervised visitation with the girls, singly and in pairs.

By the time of a February 2007 hearing, the father had moved to another town. His job took him away from home much of the time. The two older girls had problems in the father's home. This led to their removal and placement in foster care again. The court noted that "none of the parties suggests that any of the children can be placed in custody of their mother, [J.R.]. [She] still needs to work on parental skills development."

At hearings on permanency in May and July of 2007, the court received evidence directed to whether any of the children could be returned to their mother's care. There was concern over her lack of vigilance in supervision and her failure to follow the advice of service providers on how to address the sexual issues.¹ In May a social worker testified he felt the two older girls could be returned to the mother's custody, but recommended their continued placement in foster care based on their need for counseling and a safety plan regarding sexual acting out. He recommended that the two younger girls remain in foster care because of concerns about the mother's ability to provide adequate supervision for all four girls. A counselor testified the mother is emotionally deficient, had difficulty trusting others, cannot attach emotionally to the children, and is easily overwhelmed. The in-home service provider testified the younger girls have no attachment to their mother and do not see her as their mother. She also expressed concern about the mother's ability to supervise the children.

¹ It is disheartening that the mother has had to address not only the problems resulting from her care of the children but also address issues that surfaced during the children's placement in foster care.

In July the court received evidence of problems during the older girls' visitation with the mother. When stressed, the mother disassociates or "freezes" and does not acknowledge the children. She was uncooperative with the supervisor during supervised visitation. One of the older girls exhibits the same freezing behavior under stress as her mother. The social worker and the counselor both expressed concern the mother is hitting one of the older girls during unsupervised visitation and is pressuring them to say they want to return to her care. At one point, the older girls expressed a desire to return to their father's care. The court found:

It seems agreed, or at least not disputed that . . . the two younger girls now ages seven and four, have spent such a major portion of their young lives out of parental custody that they could not go back. . . . [They] have bonded with their foster parents. They have no attachment to [their mother]. They do not see her as their mother. They would suffer incalculable shock if placed elsewhere within the foreseeable future. [The father cannot care for them]. [The mother] has a full time job and has the respect and support of her supervisor and a foster mother of her acquaintance, but from the testimony of [the counselor], [the mother] is only now able to function fully to maintain herself.

Similar reasons apply to the two older girls, . . . now ages ten and eight. The parents argue mainly for greater contact with and reunification with [them], but [the girls] have special needs to deal with their sexuality issues. . . .

[The mother] exerts effort weekly to support [the older girls'] counseling needs, but the conflicts between her and [J.R.] are causing [J.R.] the need for additional counseling and show that [the mother] herself has counseling needs that manifest themselves outside her workplace. Her own emotional deficiencies and suspicions prevent her gaining adequate parenting skill, and prevent her from successfully raising children and supporting herself with her work at the same time. Neither [older daughter] trusts [her]. The best that her in-home worker could offer was a future possibility of the older girls' returning to [the mother] someday, maybe. . . .

The court also found visitation between the mother and the older girls had "become increasingly counterproductive" and ordered that suspension of

visitation continue. The court adopted the case permanency plan, ordered visitation with the younger girls be supervised, and ordered the State to file a petition for termination if long term relative care is not available.

II. Analysis

The mother contends “she has a strong bond with all four of her children, has the ability to parent them in her home, is not a danger to the children, and the children should be returned to her care.” Under Iowa Code sections 232.104(2)-(3) (2007), in setting permanency the court shall either (1) return the child to the home, (2) continue placement for six months and specify what changes must be made to eliminate the need for removal, (3) order the State to file a petition to terminate parental rights, or (4) order another permanent placement if the court finds termination is not in the child’s best interest but the child cannot be returned home. The mother argues there was not clear and convincing evidence the children could not be returned to her home, especially the two older girls. She also argues she is capable of caring for the older girls while they complete their sexual abuse education program. She asserts the State did not make reasonable efforts in that the sexual abuse education program was not offered early enough to help her understand the level of supervision needed so that the incident during spring break of 2006 might have been avoided.

We find clear and convincing evidence none of the children could be returned to the mother’s care at the time of the permanency hearing. She is unable to handle the stress of parenting the two older girls and her improper responses to stress exacerbate their emotional and psychological problems. The

same concerns with the mother's lack of parenting ability because of her own emotional problems also prevent the return of the younger girls. They have no bond with her and would be at risk of emotional harm if returned to her care.

Regarding reasonable efforts, we find no indication the mother requested that the challenged services be offered earlier.² This issue is not preserved for our review. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999); *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Concerning visitation, the mother challenged the suspension of her visitation with the older girls and the restriction of her visitation with the younger girls. Although visitation can be an integral part of efforts toward reunification, the decision to grant or restrict or supervise visitation must be guided by a child's interest and protection from adjudicatory harm. See *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002); *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). The evidence is clear that visitation with the older girls was causing emotional and psychological problems for them. The court acted properly in restricting the mother's contact with them. Given the mother's continued emotional and psychological issues and her lack of a strong bond with the younger girls, we find the court's order that her visitation with them be supervised was proper. Her claim the visitation provisions of the dispositional order were modified without proof of a substantial change in circumstances was not addressed by the court. It is not preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of

² We agree with the mother that the State should have, without request, provided services after learning of the sexual touching problems in the foster home. However, these services have now been provided.

appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”).

The State contends the appeal of the court’s order that a petition for termination of parental rights be filed concerning the two younger girls should be dismissed as interlocutory. A permanency order that directs the State to file a petition for termination of parental rights is not a final order for purposes of appellate review. See *In re T.R.*, 705 N.W.2d 6, 11-12 (Iowa 2005). Consequently, we view the mother’s appeal as an application for interlocutory appeal. See Iowa Rs. App. P. 6.1(4), 6.2(1). “[B]ased on the clear language of the case law, interlocutory appeals should rarely be permitted prior to a juvenile court’s disposition.” *In re W.D.*, 562 N.W.2d 183, 186 (Iowa 1997). We dismiss the appeal concerning the two younger girls as interlocutory.

AFFIRMED.