

IN THE COURT OF APPEALS OF IOWA

No. 7-804 / 07-1544
Filed November 29, 2007

IN THE INTEREST OF Z.S., Minor Child,

L.A.B., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from a permanency order concerning her son.

AFFIRMED.

Patricia M. Reisen-Ottavi of Kintzinger Law Firm, P.L.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee.

Jamie Splinter of Hughes & Trannel, P.C., Dubuque, for father.

Mary C. Kelley, Assistant Public Defender, Dubuque, guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

SACKETT, C.J.

Lori, the mother of Zachary and Emily¹, appeals from the permanency order for another planned living arrangement for her fifteen-year-old son. The court allowed that the son may be placed with his father, Ed, after successful completion of a residential treatment program. She contends the court erred (1) in failing to order reasonable services for her, (2) in finding she was a risk of emotional harm to Zachary, (3) in failing to hold review hearings and allowing suspension of her visitation without a hearing, and (4) in placing Zachary with his father after treatment. We affirm.

I. Scope of Review

Our review of permanency orders is de novo. We review both the facts and the law and adjudicate rights anew on the issues properly presented. We give weight to the juvenile court's findings, but are not bound by them.

In re A.A.G., 708 N.W.2d 85, 90 (Iowa Ct. App. 2005) (citations omitted).

II. Background

Zachary, born in 1992 and Emily, born in 1997, were removed from their mother's care in May of 2005 because of safety issues for the children. Both were returned to Lori's care a few days later with a safety plan and services to be provided. Formal adjudication was suspended and services continued pending sufficient progress by Lori that the case could be closed. Over the ensuing months, Lori's mental health problems worsened and Zachary's behavior problems increased. The State sought and obtained an order in February of 2006 authorizing shelter care for Zachary. Following a hearing, in late February

¹ The appeal from the order terminating her parental rights to Emily, No. 07-1612, is addressed in a separate decision, *In re E.S.*, filed on _____.

the court found Zachary was in need of assistance and ordered continued services.

Lori was diagnosed with depressive disorder and paranoid personality disorder with dependent, borderline, and obsessive compulsive features. She tested positive for cocaine and refused to submit to follow-up drug testing. Zachary was diagnosed with oppositional defiant disorder, attachment issues, post-traumatic stress disorder, and attention deficit hyperactivity disorder. He initially made some progress while in foster care.

Between February and May of 2006, circumstances continued to deteriorate to the point visitation with both parents was suspended. Lori filed a request for a different therapist, which the court granted. Hearings set for June and July in Emily's case were continued to October. In October, Lori's attorney moved to withdraw and to continue the hearing. The court granted the withdrawal, appointed new counsel for Lori, and scheduled a permanency hearing in April of 2007. It also discontinued reunification services for Lori in Emily's case "due to mother's lack of progress and not being considered a placement option for Emily." Reunification services continued to be provided to Lori in Zachary's case.

In March of 2007, Lori made an ex parte request for additional services, substitution of counsel, and a continuance. The court denied Lori's requests following a hearing in early April. It also denied Lori's counsel's motion to withdraw, Ed's counsel's motion to withdraw, and his counsel's motion to bifurcate hearings. The court noted the children's cases had been pending for two years, they had been removed from Lori's care for more than a year, and

“the time for permanency [was] long overdue.” It also noted services had not been successful and Lori had “not made any progress on her mental health issues despite two years’ worth of efforts.”

On the date of the April permanency hearing, the assistant county attorney had a medical emergency. The hearing was rescheduled for May 23. The State petitioned to terminate Lori’s parental rights to Emily. Evidence was received on May 23, June 6, June 15, and August 21 in combined permanency-termination proceedings in both cases. Lori failed to return for the afternoon session on June 6. On June 9 she was injured in a fight with her current boyfriend despite a domestic abuse no-contact order in effect. At the August 21 hearing, Lori testified she had a pending OWI charge.

As time passed in his case, Zachary realized he probably was not going to be returned to Lori’s care. His inappropriate behavior escalated, including running away eleven times over a six-week period, destroying property in the foster home, losing control at school, and fighting with police officers, leading to several criminal charges. Initially, he was placed in detention, then transferred to the local youth shelter. In the time between the June and August hearings, Zachary was moved to the Four Oaks South program. His contact with Lori was restricted but his contact with Ed was increased.

The court found termination of Lori’s parental rights to Zachary was not in his best interest, compelling reasons existed not to enter a permanency order as set forth in Iowa Code sections 232.104(2)(d)(1)-(3) (2007), Zachary could not be returned to Lori’s care, and an order for another permanent planned living arrangement as set forth in section 232.104(2)(d)(4) was proper. It ordered that

Zachary remain in a residential treatment facility until successfully discharged, then be placed with his father, Ed. Lori appeals.

III. Analysis

A. Reasonable Efforts. Lori contends the court erred “in failing to appropriately order additional reasonable effort services” for her. She argues her serious mental health diagnosis was not dealt with adequately because of disjointed mental health treatment, a lack of opportunity for hands-on ongoing therapy between Lori and Zachary, a lack of review hearings, and conflicts between Lori and Tammy Welbes, the case worker from the State.

We find the State made reasonable efforts to reunify Lori with Zachary. She did not take advantage of services and either was unable or unwilling to benefit from them. When she asked for a different therapist, the court granted her request. She exercised visitation with Zachary until his best interest required suspension of visitation. *See In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). Lori did not comply with requests for drug testing after testing positive for cocaine in January of 2006. She did not take medication as ordered to help with her mental health problems. When services were suspended in Emily’s case, they were continued in this case. We do not find specific requests for different or additional services. *See In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). We find no merit in this claim.

B. Harm to Zachary. Lori contends the court erred in finding she posed a risk of emotional harm to Zachary. The record confirms the court’s finding. Zachary had a strong bond with Lori, but it also shows it was not an healthy relationship. As he waited for her to address her own problems and saw no

progress, he realized it was unlikely that he would be returned to her care. As a consequence, his behavior deteriorated. Once visitation with Lori was suspended, Zachary made progress. He testified by telephone at the August 2007 hearing. Zachary discussed his relationship with Lori and with Ed and how Lori had attempted to sabotage any relationship Zachary might have with Ed.

The court found:

Mother would like increased contact with Zachary and an eventual return to her care. However, the court finds this would not be in the best interest of Zachary. Mother's behavior at the August permanency hearing clearly establishes she is still not dealing with her mental health issues and, in fact, is deteriorating. During the hearing mother was openly hostile, disruptive, and actively attempted to sabotage her counsel's efforts to establish a defense by refusing to answer questions or answering them in such a way as to intentionally put herself in a negative light. Given mother's diagnosis and extensive history of blaming and rejecting anyone trying to assist her, the behaviors are understandable, but not acceptable, and Zachary should not be subjected to her further mental manipulation.

These findings are amply supported by the record. Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The record shows Lori made little, if any, progress in dealing with her mental health issues despite nearly two years of services. We find Zachary would be at risk of emotional or psychological harm if returned to Lori's care. See Iowa Code § 232.2(6)(c)(1), (f).

C. Hearings and Visitation. Lori contends the court erred in failing to hold review hearings and in suspending visitation without a hearing. Iowa Code section 232.102(9) provides for a dispositional review hearing within six months of the original dispositional hearing and subsequent review hearings within a year of the first review hearing. This provision is directory, not mandatory. *In re*

A.E.O., III, 437 N.W.2d 238, 239-40 (Iowa 1989). Its aim is “to provide order and promptness in the monitoring of dispositional orders.” *Id.* at 240. Lori argues holding review hearings would have allowed the court to address the adequacy of services and other concerns she raised in motions. The original disposition occurred on February 28, 2006. Lori’s request for a different therapist was met in May of 2006. One hearing in June was rescheduled. In October a hearing in Emily’s case also addressed reunification services and progress in the instant case and granted Lori’s counsel’s motion to withdraw. Appointment of new counsel required continuing proceedings to give new counsel time to become familiar with the case. We conclude the court adequately addressed issues and concerns as this case progressed even though it did not hold a specific “dispositional review” hearing. We also question whether this issue is properly before us because it does not appear to have been presented to and ruled on by the district court. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997).

Concerning visitation, in May of 2006 the court expressly ordered that visitation between Zachary and his parents be at the discretion of the Department of Human Services. Although visitation between a parent and child is an important ingredient to the goal of reunification, *In re S.W.*, 469 N.W.2d 278, 280-81 (Iowa Ct. App. 1991), the nature and extent of visitation is always controlled by the best interests of the child and may warrant limiting parental visitation. See *In re C.G.*, 444 N.W.2d 518, 520 (Iowa Ct. App. 1989). A change in visitation could be made by the State without a hearing.

D. Zachary’s Placement. Lori contends the court erred in placing Zachary with Ed after Zachary successfully completes residential treatment. She argues

Ed did not comply with services, a home study questioned the placement, and placement with Ed is not in Zachary's best interest.

The court's permanency order requires Zachary to complete residential treatment successfully before any other placement. It does not order placement with Ed, but allows it. The court determined termination of Lori's parental rights is not in Zachary's interest, services have not corrected the circumstances requiring removal, and Zachary cannot be returned to Lori.

It is clear Zachary cannot be returned to Lori's care in the foreseeable future because she has been unable to progress in resolving her mental health issues sufficiently to be able to care for him. She also apparently did not promote his relationship with Ed. Zachary testified Ed offers the more positive environment for him, which he needs. Zachary desires a continued relationship with both parents. His relationship with Ed is improving. He recognizes Lori has problems, but wants unrestricted contact with her.

We find the court acted in Zachary's best interest in providing for his safety while allowing a continued relationship with both parents. It is the least restrictive alternative available under the circumstances. We affirm the permanency order providing for another permanent planned living arrangement under Iowa Code section 232.104(2)(d)(4).

AFFIRMED.