

**IN THE COURT OF APPEALS OF IOWA**

No. 8-375 / 08-0086

Filed May 29, 2008

**IN THE INTEREST OF M.U.-C. and M.C.,  
Minor Children,**

**A.J.C.-E., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Union County, Sherman W. Phipps, Judge.

A mother appeals from a juvenile court dispositional order in a child in need of assistance proceeding. **AFFIRMED.**

Loretta L. Harvey, Creston, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Timothy R. Kenyon, County Attorney, and Stephanie Nielson, Assistant County Attorney, for appellee.

Jane E. Rosien of Flander, Casper & Rosien, P.C., Winterset, for father.

Patrick Greenwood, Lamoni, guardian ad litem for minor children.

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

**MILLER, J.**

Angela and Jonathan, who have never been married and whose relationship consisted of two relatively brief periods of time, are the parents of five-year-old Madisyn and two-year-old McKenna (“the children”). Angela appeals from a January 2008 juvenile court dispositional order in a child in need of assistance proceeding. We affirm.

After Angela filed her appeal, Jonathan filed a motion requesting that Angela be required to order and submit a transcript of the child in need of assistance adjudication hearing. Angela filed a resistance. Our supreme court ordered the motion and resistance submitted for consideration with the appeal. Upon consideration, we find the transcript in question unnecessary to resolution of the issues presented and deny the motion.

At the times surrounding the births of the children Angela and Jonathan resided in Illinois. Angela’s mother and grandmother and Jonathan’s parents resided in Illinois and continue to do so. Angela’s grandmother lives about a forty-five minute drive from Jonathan’s parents. Her mother lives about three hours from his parents. Angela’s father lives in Iowa.

In June 2006 Angela and the children moved to Iowa. In October of that year Angela married Michael. Until the events discussed below Angela had always been the children’s primary caretaker.

In June 2007 Madisyn was at Jonathan’s parents’ home for visitation when she reported to them that she, and McKenna, had been sexually abused by Michael. An investigation by the Iowa Department of Human Services (DHS)

resulted in a founded report of abuse of both girls by Michael. The abuse consisting of “Sexual Abuse: Lascivious Acts with a Child.”

During the investigation and thereafter Madisyn remained in the home of her paternal grandparents, with whom she had a well-established and close relationship. McKenna, who has had very little contact with Jonathan and does not know him, was originally placed with Angela’s father for about one month, but then returned to Angela’s home. Following a hearing held on two days in October 2007 the juvenile court adjudicated the children to be children in need of assistance (CINA). It expressly found that Michael had sexually abused Madisyn and McKenna. The court ordered that the children be placed in the temporary legal custody of the DHS, for purposes of Madisyn being placed with Jonathan and McKenna being placed in family foster care, both under supervision of the DHS.

Following a dispositional hearing held on two days, the juvenile court ordered that Madisyn be placed in the temporary legal custody of Jonathan’s parents, with whom Jonathan lived part of the time, and that McKenna continue in the temporary legal custody of the DHS, for continued placement in family foster care. Angela appeals.

Our review of child in need of assistance proceedings is de novo. We review both the facts and the law, and we adjudicate rights anew. Although we give weight to the juvenile court’s factual findings, we are not bound by them. As in all juvenile proceedings, our fundamental concern is the best interests of the child.

*In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (citations omitted).

Angela complains that the juvenile court did not rule on four applications or motions she filed in late October and early November 2007, after the

adjudication hearing and more than thirty days before the dispositional hearing. She cites Iowa Rule of Civil Procedure 1.431(7), which provides: “The trial court shall rule on all motions within 30 days after their submission, unless it extends the time for reasons stated of record.” For several reasons we find no merit to this complaint.

First, nothing in the record shows that the motions in question were submitted for decision, or that Angela took steps to have them submitted for decision, before the dispositional hearing. The rule cited by Angela requires only that the motions be ruled on within thirty days after their submission, and nothing shows that they were submitted before the dispositional hearing.

Second, and more importantly, Jonathan contends that Angela did not preserve error on this complaint. A review of the record reveals that (1) Angela did not request a continuance of the dispositional hearing in order that the motions could be submitted and ruled on, (2) the requests that were made in the motions were not expressly addressed in the juvenile court’s dispositional orders, and (3) any failure by the court to address the motions was not pursued by way of a post-ruling motion by Angela. “Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.” *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). “Matters not raised in the trial court, including constitutional questions, cannot be asserted for the first time on appeal.” *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). A motion pursuant to Iowa Rule of Civil Procedure 1.904(2) (formerly 179(b)) is essential to the preservation of error when a trial court does not resolve an issue. *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994); *State Farm Mut. Auto. Ins. Co.*

*v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984). We conclude that error was not preserved on the complaint that Angela now attempts to present on appeal, and decline to address the merits of the issue except as discussed in the following paragraph.

Third, assuming that error was preserved as to one of the motions, Angela's application requesting that Madisyn's custody be changed to the DHS for placement in the same foster home as McKenna, that application was implicitly addressed and rejected by the juvenile court's dispositional order placing temporary legal custody of Madisyn with Jonathan's parents.

Angela complains the juvenile court did not issue a protective order or order removing Michael from Angela's home, pursuant to Iowa Code sections 232.106 (2007), 232.82(1), and 232.82(3). Angela, however, neither claimed that such an order was necessary or appropriate nor requested such an order. Her position was in fact that Michael had vacated her residence, and that she had commenced or was going to commence a dissolution of marriage proceeding, suggesting that no such order was necessary. Although the juvenile court might have exercised its discretion to issue such an order, we conclude that Angela, having not requested such an order, has no standing to complain about the court not issuing such an order, and therefore cannot have been prejudiced by the court not doing so. Reversal or modification of the court's dispositional order on this ground is thus not warranted. See *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 612 (Iowa 2000) (holding reversal not required if record shows lack of prejudice); *Shawan v. Polk County*, 420 N.W.2d 808, 810 (Iowa 1988) (same).

Angela claims Madison was not properly placed in the temporary legal custody of Jonathan's parents, who live in Illinois, because the procedures of the Interstate Compact on Placement of Children were not followed by the juvenile court. More specifically, she claims the court's dispositional order concerning Madisyn violated Article III(a) of Iowa Code section 232.158, which provides:

A sending agency shall not send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children in the receiving state.

We agree with Jonathan that the juvenile court's dispositional order concerning Madisyn is "an order transferring [her] legal custody" to an "other relative" as provided for by Iowa Code section 232.102(1)(a). Nothing in the record indicates that her placement in the temporary legal custody of Jonathan's parents is intended to or does constitute sending or causing her to be sent into Illinois "for placement in foster care or as a preliminary to a possible adoption." As shown by the record, the goal of the DHS has been and remains reunification of the children with Angela. We find no merit to Angela's claim that the court's order violates the Interstate Compact.

Angela complains that the juvenile court should have, but did not, require that Jonathan complete and submit a social report as required by Iowa Code section 232.97. Angela did not raise this issue before the dispositional hearing, and did not request a continuance in order to have the report submitted and considered. The Court did not address the question in its dispositional orders, and Angela did not raise the issue by way of post-ruling motion. We conclude error was not preserved on this issue and decline to address it further.

Angela claims that “[r]easonable efforts to reunite [Madisyn with Angela and McKenna] have not been made.” Angela has been provided with in-home services, including parenting skills development. She has been provided supervised visitations with McKenna and information on how to locate and access community resources and services she might feel she needs. Angela has been referred for a mental health evaluation and is participating in mental health counseling/therapy. She has requested no additional services from the DHS.

It appears that two matters are for the present preventing a reunification of the children with Angela and each other. First, according to Madisyn’s therapist Madisyn is not yet over her feeling that Angela was unable to protect her and keep her safe, she needs to be able to trust Angela to protect her, and she needs to be gradually transitioned back to Angela over a period of up to six months. The therapist testified this needs to be done in part through visitation between Angela and Madisyn, at first supervised at a place Madisyn feels safe and then unsupervised. The juvenile court ordered that in the two weeks between the first and second day of the dispositional hearing all parties cooperate to make Madisyn available for visitation with Angela, to be supervised by Angela’s family in Illinois. Jonathan and his parents have been willing to cooperate and provide visitation at their home, the homes of Angela’s relatives in Illinois, or both. However, Angela has never requested that any supervised visitation with Madisyn be scheduled. Further, she has refused to visit Madisyn at Jonathan’s

parents' home and did not seek to have any visitation even on an occasion or occasions when she visited her nearby family.<sup>1</sup>

Second, Angela needs to accept the fact that the children were sexually abused. However, according to witnesses presented by the State, although Angela had perhaps very recently begun to consider that the sexual abuse had in fact occurred, until about the commencement of the dispositional hearing she had been unwilling to believe that possibility.

We conclude that reasonable efforts have been made, and that fault, if any, for the lack of progress toward reunification lies with Angela rather than the State.

Finally, Angela claims the juvenile court's dispositional orders did not enumerate the reasons intensive family preservation services were not provided, as required by Iowa Code section 232.102(10)(a)(1), and did not explicitly document and state what reasonable efforts had been made to prevent removal, as required by Iowa Code sections 232.105(5)(a) and (b).<sup>2</sup>

Section 232.102(10)(a)(1) requires, in relevant part, that if intensive family services were not provided the court record is to enumerate the reasons including, among several alternatives, whether such services were not provided because "other services were found to be more appropriate." In its dispositional orders the juvenile court expressly so found. We conclude Angela's complaint regarding compliance with section 232.102(10)(a)(1) is without merit.

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<sup>1</sup> We do note that Angela has contact with Madisyn by telephone.

<sup>2</sup> As there is no section 232.105, we presume Angela's complaint refers to section 232.102(5).

Section 232.102(5) requires, in relevant part, that in order to transfer custody of a child after a dispositional hearing the juvenile court must identify the reasonable efforts that have been made to continue the child in the child's home. In its dispositional orders the court stated that reasonable efforts had been made, including "those services set forth in State's Exhibit 1, incorporated herein by reference." State's Exhibit 1 in turn identified the individual therapy with a therapist and the in-home services, including parenting skills, previously mentioned herein. We conclude the court substantially complied with the requirement in question and Angela's claim to the contrary is without merit.

**AFFIRMED.**