

IN THE COURT OF APPEALS OF IOWA

No. 8-543 / 08-0702

Filed July 16, 2008

**IN THE INTEREST OF K.S.,
Minor Child,**

D.T., Mother,
Appellant.

Appeal from the Iowa District Court for Hardin County, Kim Riley, District Associate Judge.

A mother appeals from the juvenile court's permanency order in a child in need of assistance case. **AFFIRMED.**

Douglas E. Cook of Cook Law Office, Jewell, for appellant mother.

Randal Giannetto, Marshalltown, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Martin Petersen, Special Prosecutor, for appellee State.

James Walters of Walters & Johnson, Iowa Falls, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

A mother appeals from the juvenile court's permanency order in a child in need of assistance case. We affirm.

I. Background Facts and Proceedings

This family has a long history with the Iowa Department of Human Services (DHS), including a number of founded and unfounded child abuse reports and a myriad of services. On November 13, 2006, school officials reported to DHS that K.S., who has developmental and behavioral problems, had bruises on his neck and buttock. K.S. stated his mother, D.T., had choked him. The bruise on K.S.'s buttock was consistent with the size of D.T.'s hand. K.S.'s siblings substantiated the physical abuse incidents. Although admitting to spanking him, D.T. denied she had caused K.S.'s injuries. As a result, K.S. was removed from D.T.'s custody pursuant to an ex parte temporary removal order and placed with his daycare provider and later his paternal grandparents. DHS issued a founded child abuse report listing D.T. as the responsible party.

On November 17, 2006, the State filed a child in need of assistance (CINA) petition under Iowa Code section 232.2(6)(b) (2005). The juvenile court adjudicated K.S. CINA on February 6, 2007. The juvenile court's March 13, 2007 dispositional order continued the out-of-home placement and ordered compliance with services. The juvenile court's August 7, 2007 review order ordered D.T. to participate in play therapy with K.S. The juvenile court's October 30, 2007 permanency order noted D.T. had not participated in play therapy, ordered compliance with services, determined K.S. could not be returned to D.T.'s care, and delayed permanency for six months. The juvenile court's April 15, 2008

permanency order found termination of the parent-child relationship is not in K.S.'s best interests, listed the myriad of services that were provided, found K.S. needs and deserves permanency, determined K.S. cannot be returned to his mother's care, and transferred custody and guardianship to the paternal grandparents.

On appeal, D.T. argues "[t]he state did not use reasonable efforts to reunify the child with his mother" and "[t]he court erred in determining that [the child] could not be returned home"

II. Standard of Review

Our review of a permanency order is de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Although we give weight to the juvenile court's findings of fact, especially its credibility determinations, we are not bound by them. Iowa R. App. P. 6.14(6)(g). The best interests of the child control our decision. Iowa R. App. P. 6.14(6)(o).

III. Reasonable Efforts

Although D.T. argues the State failed to provide her with reasonable services in a number of particulars, the juvenile court specifically found in the permanency order that "[s]he has not claimed that she was denied services or that the services were inadequate." A parent has an obligation to demand "other, different, or additional services prior to a permanency . . . hearing." *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). Because D.T. failed to request additional services prior to the permanency hearing, we conclude D.T. has not preserved this issue for our review. *See id.*

Even if this claim had been preserved, we find the services D.T. received, including in-home services, supervised, semi-supervised, and unsupervised visitation, financial assistance (gas vouchers and funds to repair D.T.'s vehicle), and individual and play therapy for K.S., were reasonable under the circumstances of this case.

IV. Permanency

After the permanency hearing, the juvenile court has many options. The juvenile court may “[e]nter an order pursuant to section 232.102 to return the child to the child’s home” or “[e]nter an order, pursuant to findings required by subsection 3, to . . . [t]ransfer guardianship and custody of the child to a suitable person.” Iowa Code §§ 232.104(2)(a), (d)(1).

Prior to entering a permanency order pursuant to subsection 2, paragraph “d,” convincing evidence must exist showing that all of the following apply:

- a. Termination of the parent-child relationship would not be in the best interest of the child.
- b. Services were offered to the child’s family to correct the situation which led to the child’s removal from the home.
- c. The child cannot be returned to the child’s home.

Id. § 232.104(3).

“A parent’s failure to address his or her role in the abuse may hurt the parent[’s] chances of regaining custody and care of [his or her] children.” *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). It is essential in meeting the children’s needs the parent recognize and acknowledge the abuse. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995). Meaningful change cannot occur without this recognition. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). Furthermore,

without this acknowledgement, any services are not likely to be effective. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

The juvenile court found, and we agree, K.S. could not be returned to D.T.'s care because D.T. missed many of the play therapy sessions and during play therapy D.T. continued to deny that she had physically abused or injured K.S. The record also indicates K.S. and D.T. continue to have serious trust and bonding issues, and K.S. does not want to live with his mother. The reported prognosis for successful reunification is "grim." Although D.T. continued to dispute her other children's versions of the physical abuse and injuries inflicted on K.S., D.T. conceded that the statements were "accurate to an extent" but had been "embellished."

Lastly, the record indicates K.S. has thrived emotionally, physically, mentally, developmentally, and behaviorally in his paternal grandparents' care and K.S. is bonded to them. K.S. needs and deserves permanency, and his paternal grandparents can provide him with this much needed permanency. We accordingly affirm.

AFFIRMED.

Mahan, J., concurs; Sackett, C.J., concurs specially without opinion.