

IN THE COURT OF APPEALS OF IOWA

No. 8-648 / 06-1853
Filed October 1, 2008

Upon the Petition of

TIMOTHY M. DAVIS,
Petitioner-Appellee,

And Concerning

MINDY B. HARLAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, R. David
Fahey, Judge.

Mother appeals default judgment awarding legal custody of the parties'
child to the child's father. **AFFIRMED.**

Mindy B. Harlan, West Burlington, pro se.

Scott E. Schroeder of Schroeder Law Office, Burlington, for appellee.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

The sole issue on appeal is whether the district court properly entered a default judgment against Mindy Harlan. Finding no error, we affirm.

Mindy Harlan and Timothy Davis are the parents of a child born in 1997. In October 2002, after a hearing, the juvenile court ordered the child removed from Mindy's home and placed in Timothy's home. The juvenile court ordered the removal "due to the substance abuse of the [child's] mother and the numerous safety concerns in the mother's home."

In June 2004, after a contested hearing, the district court awarded joint legal custody to Mindy and Timothy and placed physical care with Timothy. The court found "Mindy has attempted to manipulate this proceeding by providing inaccurate information and lying to . . . [obtain] favorable findings concerning her abuse of illegal substances." Due to "Mindy's use of drugs and her inability to recognize her need for treatment," Mindy was granted conditional visitation. Mindy failed to fulfill the visitation conditions. In 2006, Timothy filed a petition seeking sole legal custody of the child and seeking a change in the child's last name. Mindy was personally served with an original notice and a copy of the petition on February 16, 2006, and filed a pro se response on March 21, 2006. On June 27, 2006, Timothy's attorney and Mindy participated in a telephone conference with the court's case coordinator and a trial date of October 18, 2006, at 1:00 p.m. was established. The conference memorandum was mailed to both parties.

When Mindy did not appear at 1:00 p.m. on October 18, the court attendant made public calls for her and there was no response. The hearing

commenced at 1:11 p.m. and concluded at 2:00 p.m. Mindy did not appear during that time. The court specifically found Mindy “has had notice of this trial.” The court agreed a name change was appropriate. Stating Mindy “has abandoned her son in virtually every respect” and has “utterly failed” to “provide emotional, nurturing support,” the court also ruled:

Her failure to submit to substance abuse evaluation for a period of some twenty-four or more months now, her failure to seek treatment, her failure to provide evidence that she is no longer using drugs, all justify a finding by clear and convincing evidence that [Timothy] ought to be awarded [the child’s] sole custody.

Other aspects of the decree will remain in place; including [the] plan for reunification. . . . But in this court’s opinion, time is even fast running out on that. Thirty months is too long. If this case were still in juvenile court, the court is convinced that [Mindy’s] parental rights would have long ago been simply terminated.

Mindy appeals and seeks to overturn the district court’s judgment. Many of her arguments are not relevant to this appeal and will not be addressed. The issue before us is whether Mindy was in default and the court’s judgment should be overturned. We review this equity case de novo. Iowa R. App. P. 6.4.

A party is in default when the party “[f]ails to be present for trial.” Iowa R. Civ. P. 1.971(3). The court may “award any relief consistent with the petition.” Iowa R. Civ. P. 1.976. Although Mindy’s brief alleges she was in the courthouse and was denied access to the courtroom on the day of trial, we have no record to support her claim. See *Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994) (holding we do not consider issues based on information outside the record). Mindy failed to file a motion to set aside the judgment under Iowa Rule of Civil Procedure 1.977.

We find the relief ordered by the court is consistent with Timothy’s petition and supported by the record. We find no error when Mindy was properly served

with an original notice, participated in the conference setting the time and date of the hearing, and yet did not appear in the courtroom at any time during the hour-long process. See *Claeys v. Moldenshardt*, 260 Iowa 36, 43, 148 N.W.2d 479, 484 (1967). We decline Timothy's request for appellate attorney fees. Costs are assessed to Mindy.

AFFIRMED.