IN THE COURT OF APPEALS OF IOWA

No. 9-003 / 08-1905
Filed February 4, 2009

**IN THE INTEREST OF C.G., M.G., R.G., and L.G.,
Minor Children,**

C.M., Mother
Appellant,

C.G., Father,
Appellant.

Appeal from the Iowa District Court for Montgomery County, Susan Larson Christensen, District Associate Judge.

A mother and father appeal the termination of their parental rights to four of their children. **AFFIRMED.**

De Shawne L. Bird-Sell of DeShawne L. Bird-Sell, P.L.C., Glenwood, for appellant mother.

C. Kenneth Whitacre of Swenson & Whitacre, P.C., Glenwood, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Bruce Swanson, County Attorney, for appellee State.

Josiah Wearin of Stamets & Wearin, Red Oak, for minor children.

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

VAITHESWARAN, J.

A mother and father appeal the termination of their parental rights to four of their children.

I. Background Facts and Proceedings

Colette and Curtis are the parents of Lynette, born in 1996, Riah, born in 2000, Myles, born in 2002, and Cheyenne, born in 2003. In October 2006, the State filed a child in need of assistance proceeding based on the removal of three older children. At that time, the parents expressed a willingness to participate in services. A month later, the juvenile court ordered the removal of the four younger children based on evidence that Colette had moved into the home of a known drug user. The four children remained out of the home throughout the subsequent proceedings.

The State eventually filed a petition to terminate the parents' rights to these children. Following a hearing that Colette did not attend, the district court granted the petition as to both parents, terminating their rights pursuant to Iowa Code sections 232.116(1)(d) (2007) (requiring proof of prior adjudication, subsequent offer or receipt of services to correct situation, and proof that circumstances leading to adjudication continue to exist) and (f) (requiring proof of several elements including proof that children could not be returned to parents' custody). Our review of the termination ruling is de novo. Iowa R. App. P. 6.4.

II. Analysis

A. Mother

Colette argues that (1) she should have been afforded additional time to work towards reunification and (2) the Department of Human Services did not make reasonable efforts towards reunification.

1. There is no question that the juvenile court has authority to extend the time for reunification even if the statutory grounds for termination are met. Iowa Code § 232.116(3)(c). Assuming without deciding that this issue was preserved for review, an extension was not warranted.

The four children that are the subject of this proceeding were out of Colette's care for twenty-two consecutive months. For at least three months before the termination hearing, Colette declined to exercise her right to visit the children. Even before then, her attendance at visits had become sporadic. In July 2008, a department employee reported that of the previous thirteen weekly visits since May 29, 2008, Colette missed ten.

As noted, Colette also did not appear at the termination hearing. Her attorney conveyed her husband's message that their car broke down and she had no way to make it to court. In response, the court stated, "I believe your client has had ample opportunity to make some sort of accommodation to get here." Based on this record, we conclude an extension of time for reunification was not warranted.

2. The department must make reasonable efforts toward reunification. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). This obligation is "a part of its

ultimate proof the child cannot be safely returned to the care of a parent." *Id.*; *see* Iowa Code § 232.116(1)(f).

Colette maintains the department did not provide the children with mental health services. The record belies this assertion. The children came into the human services system with mental health conditions. Those conditions were exacerbated by multiple foster care placements. For example, Lynette and Riah were placed in three foster homes, Cheyenne was in four different foster homes, and Myles had nine placements, including hospitalizations.

The department recognized the existence and worsening of the children's conditions and attempted to address their issues in a variety of ways. Lynette received regular individual and family therapy in addition to medication for her mental health conditions. Riah received medication therapy and remedial services to address authority issues and jealousy. Myles received therapy for delayed speech and participated in play therapy and remedial services. Finally, Cheyenne was being seen by a psychiatrist and received medication therapy and remedial services. It is clear, therefore, that the department made reasonable efforts to treat the children's conditions.

Colette next contends the department did not make reasonable efforts to reunify her with the children. The record reflects that Colette received a plethora of services, including a psychological evaluation, weekly supervised visits with her children, parent skills training, and drug testing. Colette is correct, however, that not all the services were tailored to her needs. For example, the department's transportation assistance was less than optimal. A department employee acknowledged that the four children lived "throughout southwest Iowa."

She conceded that Colette did not live in the vicinity of any of the children and had financial difficulties. Nonetheless, the department did not move the visits to Colette's home as she requested[1] or provide measurable financial assistance to facilitate her travel to the weekly visits in Red Oak or Glenwood.[2]

Colette expressed understandable frustration with the department's inaction. However, she did not seek judicial redress. Instead, she simply stopped attending the visits, stopped calling the children,[3] and missed a meeting with the department that was set up to assess her situation. Under these circumstances, we conclude the department was not required to pursue the issue of transportation assistance. We further conclude the department satisfied its reasonable efforts mandate.

B. Father

Curtis makes several arguments in support of reversal. He maintains (1) there was no showing he would be a danger to the children and the record in fact showed that the children were bonded to him, (2) he repeatedly asked for and

[1] The three-bedroom home in which Colette lived with her husband had one bedroom set aside for Colette and her husband, one designated "the boys' room," and one designated "the girls' room." Before the children were removed from Colette's care, one of them disclosed that Colette's husband's son inappropriately touched her. The department determined that the house needed to be redesigned to segregate this son from Colette's children. The parents responded that they could not afford to remodel the home. The department did not assist in implementing an alternate safety plan. A department employee justified the inaction by noting that the children did not visit their parents' home. At the same time, the department refused Colette's request to have the visits there. While the department indicated it would be difficult to transport the children to her home, an employee acknowledged that at least one of the children had to travel more than an hour to attend the visits in Glenwood. We are not persuaded by the department's rationale for refusing to hold visits in Colette's home.

[2] The department gave Colette one "gas card."

[3] In 2008, Colette told a department worker that she was not calling her children because it was too hard on them.

was denied assistance in finding a permanent place to live and employment and travel assistance, (3) his constitutional rights were violated by consideration of his age, (4) the State should have considered him as a placement rather than placing the children with their mother, (5) the court inappropriately considered the fact that he had numerous other children with whom he had not maintained contact, (6) the State inappropriately required him to undergo a substance abuse evaluation even though he could not afford one and there was no evidence that he was using any substances, (7) there was no evidence that he was unwilling to provide mental-health treatment for the children, and (8) there was no showing that he could not presently assume his parental role without harm to the children.

We reject Curtis's constitutional argument on the ground that it was not raised or decided below. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

Several of the remaining arguments overlap. We will address them together.

Curtis had a severe respiratory condition that required him to live in a residential care facility. He testified that he could not care for the children while he was living there. Therefore, the children could not be returned to his custody.

The department nonetheless afforded Curtis supervised visits with the children. He attended the visits until June or July of 2008, when his health began to fail. According to a department employee, Curtis shared a bond with the children but had a hard time managing their behaviors. While she had no concern that he was abusing substances at the residential care facility, she

stated she was concerned with "[h]is health, his lack of residence, his lack of financial security, his parenting."

Based on this record, we reject Curtis's arguments in support of reversal.

III. Disposition

We affirm the termination of Colette's and Curtis's parental rights to Lynette, Riah, Myles, and Cheyenne.

AFFIRMED.