IN THE COURT OF APPEALS OF IOWA

No. 9-010 / 08-1607
Filed February 4, 2009

IN THE INTEREST OF M.L. and I.L.,
Minor Children,

J.L.R., Mother,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Associate Juvenile Judge.

A mother appeals from the juvenile court order terminating her parental rights to two children. **AFFIRMED.**

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Gregg R. Rosenbladt, Assistant County Attorney, for appellee.

Kristen N. Ollenburg, Mason City, attorney and guardian ad litem for minor children.

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

SACKETT, C.J.

A petition on appeal has been filed by the mother, Jenny, challenging and seeking a reversal of an October 1, 2008 order terminating her parental rights to her two sons. The older child was born in July of 2005 and the younger was born in August of 2006. She contends the juvenile court abused its discretion in not allowing her to introduce evidence concerning the comparison of this case to others and that reasonable efforts were not made to reunify her family. We affirm.

Scope of Review. Our review of child-in-need-of-assistance proceedings is de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d

359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

Background. The children were removed from Jenny's care in early November 2007. She had custody of the children and the children's father was not living in her home. His parental rights were also terminated but he has not appealed.[1] A petition was filed to have the children found to be children in need of assistance as the result of Jenny's failure to exercise a reasonable degree of care and of having illegal drugs in her system. After a contested hearing the children were found to be at risk because of lack of or poor supervision by their mother because of exposure to illegal drugs and found to be children in need of assistance. The children remained in foster care and remained therein after subsequent hearings.

In June of 2008 a petition to terminate the parents' rights to the children was filed and it came on for hearing on July 31, 2008. The order finding that reasonable efforts had been made to reunify the family and that parental rights should be terminated under Iowa Code sections 232.116(1)(e) and (h) (2007) was not filed until October 1, 2008. Jenny makes no claim that the grounds for

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[1] The father initially was involved and has provided financial support for the children during the pendency of these proceedings. However, after his initial interest he no longer exhibited any interest, in part because of his difficulties in dealing with Jenny. His parental rights were also terminated. He has not appealed. While the issue is not before us, we question whether terminating his parental rights and his support for the children is prudent and in their best interest unless there is a clear indication the children will be adopted. *See In re K.J.K.*, 396 N.W.2d 370, 371 (Iowa Ct. App. 1986). The children also appear to be receiving state support. Therefore the public interest is involved. Parents are legally obligated to support their children and courts should be slow in making children wards of the state where the parents have the means to provide support. *See Anthony v. Anthony*, 204 N.W.2d 829, 833 (Iowa 1973); *K.J.K.*, 396 N.W.2d at 371.

termination under the two code sections were not proved by clear and convincing evidence, and our review convinces us they were. The children were removed primarily because of the mother's use of illegal drugs. Jenny did not handle the removal of the children well and she had difficulty working with the social workers assigned to her case. During the pendency of the child-in-need-of-assistance proceedings she continued to use illegal substances, as shown by a number of positive drug screens that showed she consistently tested positive for various drugs including cocaine, amphetamine, methamphetamine, and marijuana. It was recommended she seek substance abuse treatment and she has had evaluations scheduled but failed to make herself available. She failed to keep appointments for mental health treatment. She did not attend all visits with the children and when she did she was frequently belligerent to those social workers and other supervising the visits. She was abrasive and abusive to those working with her. She exhibited frequent mood swings.

Reasonable Efforts. Jenny's challenge is based on her contention that reasonable efforts were not made to preserve the family unit. Jenny specifically contends that the juvenile court abused its discretion in not allowing her to introduce evidence concerning the comparison of this case to others. She contends it was error for the juvenile court to sustain the State's objections to requested testimony from employees of the Department of Human Services regarding a comparison of this case to other cases to which the workers had been assigned. She argues she was attempting to elicit comparative testimony from these witnesses to prove their predisposition to termination, their dislike of

her, the prejudice they exhibited towards her and her family, and their wish to terminate her parental rights when the case began. She contends the testimony she sought would have supported her argument that reasonable efforts were not made to preserve the family.

We have reviewed the transcript and we note that the juvenile court ruled on objections.[2] In equity cases, the trial court should ordinarily not rule on objections to testimony, but receive all answers subject to the objection. This procedure permits de novo review of the record in the appellate courts. *Hughes A. Bagley, Inc. v. Bagley*, 463 N.W.2d 423, 426 (Iowa Ct. App. 1990). These proceedings are in equity and the court was in error in ruling on the objections. In doing so the juvenile court deprived us of the opportunity to review the answers the witnesses may have given to the proffered questions.[3] Jenny did not object to the juvenile court's rulings on objections to questions and made no offer of proof. Consequently error on this issue was not preserved for review. We affirm on this issue.

Jenny next contends the State failed to make reasonable efforts to reunite her family. The State contends error was not preserved on this issue because it was not raised in the juvenile court. The juvenile court found reasonable efforts

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[2] Our review of this issue is made difficult by the nature of this expedited appeal. Iowa Rule of Appellate Procedure 6.151 covers the petition in expedited cases. Rule 6.151(2)(*c*) provides only for: "A concise statement of the material facts as they relate to the issues presented in the petition on appeal." This is in contrast to rule 6.14, which covers other appeals, and rule 6.14(1)(*d*), which provides that: "All portions of the statement [of the case] shall be supported by appropriate references to the record or the appendix in accordance with rule 6.14(7).

[3] We do not by this statement intend to imply that we believe such evidence would or would not be relevant to the issues here.

were made to reunify the family and our de novo review of the record causes us to agree with this finding. Understandably, Jenny was angry that her children had been removed from her care, and she was unhappy with the manner in which the department approached her problem. The services rendered were of a kind generally used to assist substance-addicted parents and included recommendations for substance abuse treatment, which Jenny failed to follow. Jenny spent more time venting her anger than she did cooperating with social workers. She caused so many problems for one foster care family that, based on her attitudes, the family asked that the children be removed. The statutory time frames for parents to redeem themselves are short. *See, e.g.*, Iowa Code §§ 232.116(1)(f)(3) (twelve months); 232.116(1)(h)(3) (six months). For a parent to succeed the parent must immediately cooperate with social workers and either participate in recommended programs or suggest reasonable alternatives and ask that they be implemented. *See In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Jenny did neither. We affirm on this issue.

AFFIRMED.