

IN THE COURT OF APPEALS OF IOWA

No. 9-074 / 08-2058
Filed February 19, 2009

**IN THE INTEREST OF S.T., E.T., T.T., and J.K.,
Minor Children,**

J.T., 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's permanency order.

AFFIRMED.

Cynthia J. Foos, Mason City, for appellant mother.

Kim R. Snitker of Brown, Kinsey, Funkhouser & Lander, P.L.C., Mason City, for father of S.T., E.T., and T.T.

David C. Laudner, Mason City, for father of J.K.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Paul L. Martin, County Attorney, and Shaun Showers, Assistant County Attorney, for appellee State.

Mark Young, Mason City, for minor children.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

A mother appeals from the juvenile court's permanency order. She contends the juvenile court abused its discretion by imposing rigid and unreasonable time constraints for hearing, thereby excluding the testimony of two important witnesses. Additionally, she contends she was denied a full and fair hearing when the juvenile court released a subpoenaed witness, and then resumed hearing after the witness's departure. Upon our review, we affirm.

I. Background Facts and Proceedings.

J.T. is the mother of S.T., E.T., T.T., and J.K. B.T. is the father of S.T., E.T., and T.T.¹ K.K. is the father of J.K.²

In April 2007 the children came to the attention of the Iowa Department of Human Services (Department) after J.T.'s paramour punched T.T., then twelve, in the stomach. J.T. voluntarily placed the children in foster care in August 2007. In October 2007 the juvenile court adjudicated the children as children in need of assistance (CINA) due to the mother's inability to supervise the children. The mother was offered services with the goal of reunifying her with the children.

The case proceeded to the permanency stage in the fall of 2008. On October 23, 2008, the juvenile court entered an order setting a hearing on visitation and permanency for November 5, 2008. The court allotted one hour for the hearing, and the order stated that "[a]ny party contemplating more time should notify the Court and counsel as soon as possible. The court reserves the right to reschedule any hearing requiring more than [one] hour."

¹ B.T. filed a response to J.T.'s petition on appeal.

² K.K. has not appealed from the juvenile court's permanency order.

The hearing commenced on November 5, 2008 at 10:33 a.m. The juvenile court stated at the beginning of the hearing that the parties did not believe they could conclude the matter by 12:30 because the Department's managing caseworker was not able to attend the hearing. The court stated it was its intent that the parties meet informally before leaving the courthouse to discuss another date for resuming the hearing. The court then proceeded with the hearing. The State presented one witness, and the mother's counsel presented two witnesses. At 12:30, the court noted that it had another commitment at 1:00 p.m. and the hearing would have to be resumed at a later date. The court then entered an order finding that the matter should be continued, and set a hearing for November 19, 2008, at 9:00 a.m. The order allotted three hours for the hearing.

The hearing resumed on November 19, 2008 at 9:21 a.m. The mother's counsel called one witness to testify, and then called the caseworker who was unavailable at the first hearing. After the mother's counsel concluded direct examination of the caseworker, the court stated:

Counsel, . . . this hearing was scheduled to conclude at noon today. We have spent an hour and a half with one and a half witnesses. If we're to be done by noon today, which is my intent, and I'm inclined to call a halt to this hearing regardless where we are today. We already spent three hours on another day. We need to move along and fair warning to everybody.

The caseworker was then cross-examined, and then asked questions by the mother's counsel on redirect. The court then noted that "[w]e have time for a few more questions before we adjourn." When the examination of the caseworker concluded, the court stated, "Counsel, I have a meeting . . . that was to begin at

[noon] so we're going to adjourn." The court then stated it would meet with the parties at 1:00 p.m. to see how they could conclude the hearing, noting that "[c]ertainly it's not been very efficiently presented at this point in my opinion."

After meeting with the parties, the hearing resumed at 1:37 p.m. The court stated:

I've advised the parties in chambers and informal meeting that we needed to move on to conclude this hearing, expedited as much as possible.

....
As I advised counsel during our conversation, I expect to conclude this hearing by 3:00 p.m. The only evidence expected is on [the] mother's behalf. I did tell [the mother's counsel] that they could excuse one subpoenaed witness, [T.T.'s foster mother]. I gave her the opportunity to contact [the foster mother] by phone to see if she could testify by phone.³

The mother's counsel was not able to reach the foster mother by phone to testify at that time, and the hearing continued with the mother's testimony. After the mother's direct and cross-examination, the court asked the mother a few questions. The court then noted it was twenty minutes to three, and allowed the mother to proceed with redirect examination of the mother. When the mother's examination ended, the court gave the mother's counsel another opportunity to contact the foster mother, noting they still had ten minutes. The mother's counsel responded that "I would prefer to ask [K.K.] some questions. . . . I believe that if [the foster mother] was available she would have called the court administration and we would have known about it."

³ The mother alleges that at the unreported meeting in chambers, the court first indicated that it would not be able to continue the hearing that day, and she was advised to release her subpoenaed witness, the foster mother. After the witness was released, the court apparently changed its mind and resumed the hearing that day.

After the mother's counsel finished its direct examination of K.K., cross-examination began. Thereafter, the court stated: "Counsel, it's now 3:00. We need to conclude this hearing and I'll consider the matter submitted. Counsel, I'll give you the opportunity if you wish to make some written arguments to do that within the next seven days." After some discussion regarding the written arguments, the court adjourned.

The mother's counsel never objected to the adjournment of the hearing, or the excusal of her witness. The mother never requested that the hearing be continued so the foster mother or B.T. could give testimony, and the mother's counsel never provided any information regarding what the foster mother or B.T.'s testimony would be. The mother's counsel did not provide any written arguments to the juvenile court, and the mother's counsel did not file a post-ruling motion to enlarge.

On December 5, 2008, the juvenile court entered its permanency order. The court found the children remained CINA, and directed that the Department place S.T., E.T., and T.T. with their father, B.T., upon several conditions. The court further ordered that the mother complete substance abuse counseling and mental health counseling as recommended by professionals, follow medication management as recommended, maintain safe and appropriate housing, and maintain her employment. The court then set another permanency hearing for March 18, 2009, allotting two hours for the hearing, and noting that any party contemplating more time should notify the court and counsel as soon as possible.

The mother appeals.

II. Scope and Standards of Review.

Although our review of permanency orders is de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003), we review evidentiary rulings for an abuse of discretion. *In re E.H. III*, 578 N.W.2d 243, 245 (Iowa 1998).

III. Discussion.

On appeal, the mother contends the juvenile court abused its discretion by imposing rigid and unreasonable time constraints for hearing and that she was denied a full and fair hearing when the juvenile court released a subpoenaed witness. The State and B.T. argue that the mother failed to preserve any error on either of her arguments and that the mother cannot show any resulting prejudice even if an abuse of discretion occurred. We agree.

Issues must be presented to and ruled upon by the district court in order to preserve error for appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003); *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992). Here, the mother never voiced an objection or complaint about the alleged errors or improprieties. Consequently, we conclude the mother failed to preserve the alleged errors for appeal.

Furthermore, even if the mother had preserved error, we find the mother cannot show any resulting prejudice. “It is generally recognized that matters relating to the course and conduct of a trial, not regulated by statute or rule, are within the discretion of the trial judge.” *In re Marriage of Ihle*, 577 N.W.2d 64, 67 (Iowa Ct. App. 1998) (citations omitted). However, this discretion is not limitless. *Id.* “The discretion to manage trials is always constrained, in a large part, by due process principles requiring all litigants in the judicial process to be given a fair

opportunity to have their disputes resolved in a meaningful manner.” *Id.* (citing *In re Marriage of Seyler*, 559 N.W.2d 7, 9 (Iowa 1997)). Nevertheless, it is incumbent upon the party seeking additional time to present evidence to establish prejudice. *Id.* at 68-69. “We will not presume the existence of prejudice when evidence is excluded from trial.” *Id.* (citations omitted).

In this case, the juvenile court set the permanency hearing for one hour and notified the parties that if more time would be needed, they should contact the court immediately. The court was notified the day of the hearing that more time would be needed, and the court allowed the parties to present their evidence in the allotted time and allowed the hearing to be resumed at a later time for another three hours. The parties did not request more than three hours’ time for the resumption of the hearing. The court even allowed the resumed hearing to go another hour and a half beyond the extra three hours allotted for the hearing. The mother never objected nor requested that the hearing be continued to present additional evidence when the court adjourned the hearing. Additionally, the mother never provided to the juvenile court, prior to adjourning the hearing or even thereafter, any proffered evidence or statements concerning the nature and relevance of the foster mother’s or B.T.’s testimony.

Here, the record fails to disclose the nature of the excluded testimony and its importance to the issues in the case, and the juvenile court was never informed of such. We therefore conclude the juvenile court did not abuse its discretion in imposing time constraints and releasing the mother’s witness.

IV. Conclusion.

Because we conclude the mother failed to preserve the alleged errors for appeal and the juvenile court did not abuse its discretion in imposing time constraints and releasing the mother's witness, we affirm the order of the juvenile court.

AFFIRMED.