

IN THE COURT OF APPEALS OF IOWA

No. 9-079 / 9-0051
Filed March 11, 2009

**IN THE INTEREST OF R.C., A.P., and A.C.-A.,
Minor Children,**

D.C., Mother,
Appellant.

Appeal from the Iowa District Court for Pottwattamie County, Kathleen Kilnoski, District Associate Judge.

A mother appeals a juvenile court permanency order in child in need of assistance proceedings. **AFFIRMED.**

Scott D. Strait, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Phil Caniglia, Council Bluffs, for father D.P.

Brian Rhoten, Council Bluffs, for father M.A.

Lori Falk-Goss, Council Bluffs, for father M.S.

Roberta Megal, Public Defender, Council Bluffs, guardian ad litem for minor children.

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

PER CURIAM

I. Background Facts & Proceedings

Danielle is the mother of Alexis, Austin, and Richard.¹ Danielle has a history of mental health problems. The children have previously been removed from her care and been adjudicated to be children in need of assistance (CINA).²

The children were most recently removed from the mother's care on February 28, 2008, after an incident of domestic abuse between Danielle and her paramour, Robert. The children observed Robert punching and choking Danielle. Alexis attempted to protect her mother, and Robert kicked Alexis. The children were placed in the care of a maternal aunt, Crysty.

The children were returned to Danielle's care on March 21, 2008, because Robert had moved out of the home. The children were removed again on April 4, 2008. Robert had come over to Danielle's home while the children were present and hit Danielle in the face. The children were placed with Crysty.

The juvenile court adjudicated the children to be CINA under Iowa Code sections 232.2(6)(b) and (c)(2) (2007), and a disposition order followed.

Danielle continued to have problems with anger and violence. She reported to a social worker that she had been in a bar fight. Also, Robert stated Danielle had taken a baseball bat to his Jeep. On September 26, 2008, Danielle yelled and screamed at workers at the Department of Human Services (DHS) offices. On October 29, 2008, Danielle became upset with a social worker and

¹ The father of Alexis is Mark A., the father of Austin is David, and the father of Richard is Mark S. The fathers have not appealed the juvenile court permanency order.

² The children were adjudicated CINA two times previous to this action. They had been removed from Danielle's care on three previous occasions.

began yelling that she was going to kill the worker. She kicked her car, leaving a dent. The children were at the home during this incident.

She also maintained a relationship with Robert. Danielle told a social worker in September 2008 that she continued to have a relationship with Robert. He was present during a bowling outing Danielle had with the children. Robert was present at Danielle's trailer on October 9, 2008. She had told social workers previously that Robert was unaware of the location of her home. Although she later stated she had ended her relationship with Robert, in November 2008 Danielle made telephone calls from Robert's father's telephone. Danielle sometimes stayed with a friend who lived next door to Robert's father. This friend stated Robert was occasionally at his father's home.

A permanency hearing was held on December 11, 2008. The juvenile court entered an order changing the permanency goal from reunification to guardianship with Crysty. The court granted concurrent jurisdiction to permit Crysty to pursue guardianship of the children in district court. The court ruled that due to the children's bond with the mother, termination of parental rights was not in the children's best interests. Danielle appeals the decision of the juvenile court.

II. Standard of Review

Our scope of review in juvenile proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Merits

A. Danielle contends the State failed to show that the children could not be returned to her care. She asserts she has had no contact with Robert since October 9, 2008, that she has been seeking treatment for her mental health concerns, and she has a suitable residence for the children. The State asserts Danielle did not preserve error on this issue because at the permanency hearing she asked for additional time to reunite with the children, and did not ask to have the children immediately returned to her care.

Regardless of whether error was preserved on this issue, it is clear the children could not be safely returned to Danielle's care at the present time. Danielle had not addressed her anger management problems. Furthermore, the juvenile court was not convinced she had ended her relationship with Robert, and neither are we. Additionally, Danielle stated that despite the input of a social worker, she would continue to parent as she always had done in the past. We conclude the juvenile court properly determined that the children should remain in the care of Crysty.

B. Danielle argues that it is not in the children's best interests to abandon efforts at reunification and grant concurrent jurisdiction to permit guardianship proceedings in the district court. This case involved the fourth and fifth times the children were removed from their mother's care, and involved the third CINA proceedings. The children need permanency. As has been noted often in the past, "[p]atience with parents can soon translate into intolerable hardship for their children." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). We

conclude it is in the children's best interests to permit concurrent jurisdiction so their aunt may obtain guardianship.

C. Danielle contends DHS did not provide sufficient reunification services to her. At the permanency hearing the juvenile court asked Danielle if there were any services she needed that had not been offered to her, and she responded in the negative. We conclude Danielle has not preserved error on this issue. See *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999) (noting that while a State has the obligation to make reasonable efforts, a parent has the obligation to challenge the lack of services).

D. Finally, Danielle asserts the juvenile court should have granted her additional time for reunification services. We have already determined that it was in the children's best interests to establish permanency for them through guardianship proceedings. Danielle had received services not only in this case, but in the previous CINA proceedings. The juvenile court did not abuse its discretion in denying Danielle's request for additional time.

We affirm the decision of the juvenile court.

AFFIRMED.