

IN THE COURT OF APPEALS OF IOWA

No. 9-204 / 09-0088
Filed May 6, 2009

**IN THE INTEREST OF K.M. and M.M.,
Minor Children,**

K.C., Mother,
Appellant.

Appeal from the Iowa District Court for Crawford County, Donovan D. Schaefer, District Associate Judge.

A mother appeals the termination of her parental rights to two children, contending the trial court lacked subject matter and personal jurisdiction.

AFFIRMED.

Maura Sailer of Reimer, Lohman & Reitz, Denison, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael Mundt, County Attorney, and Julie Schumacher, Assistant County Attorney, for appellee State.

Daniel Dlouhy of Brink & Sextro, L.L.P., Denison, for minor child.

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

VAITHESWARAN, J.

Karen appeals an order terminating her parental rights to two children. She raises jurisdictional issues.

I. Background Facts and Proceedings

In November 2005, the State of Iowa applied to have Karen's children temporarily removed from her custody based on information that she physically abused and neglected them. The children were temporarily removed but were returned to Karen's custody within a few days. The State filed child-in-need-of-assistance petitions and, later, a request to have the children placed in foster care on the ground that Karen was not progressing with issues that precipitated State intervention. The court initially ordered that custody remain with Karen but subsequently ordered the children placed in Iowa foster care.

In July 2007, Karen applied for a modification of a prior dispositional order. She noted that she and her children had lived in Illinois before moving to Iowa, her mother still lived in Illinois, a home study had been completed of her mother's Illinois home and the author of the home study recommended the children's placement with their grandmother. The district court initially ruled that the Illinois counterpart to the Iowa Department of Human Services had been involved with the family before their move to Iowa, Karen had returned to Illinois, and it would be appropriate to transfer jurisdiction to Illinois. The court later reconsidered its order and ruled that jurisdiction would remain with the Iowa court. The court also concluded that the grandmother had not "demonstrated adequate initiative and effort in obtaining services and counseling to address the possibility of placement

of the boys with her, and that no change in the disposition orders can be made until such initiatives are documented.”

The State of Iowa ultimately petitioned to terminate Karen’s parental rights to the children. Karen moved to dismiss the action based on lack of subject matter jurisdiction and personal jurisdiction. The district court overruled the motion. Karen filed a rule 1.904(2) motion to enlarge the court’s findings and conclusions, which the district court also denied. Following an evidentiary hearing on the termination petition, the court terminated Karen’s parental rights to the two children. That ruling was filed on December 17, 2008. Karen filed a second rule 1.904(2) motion which was identical to her first motion. The court denied the motion on January 6, 2009, stating:

The Court notes that, as argued by the State, the Mother’s current Motion to Enlarge raises no new issues from the Motion to Enlarge filed on November 25th and ruled upon by the Court on December 9th, 2008. All issues raised in the Mother’s current Motion have already been ruled upon, and the Court further finds that those issues need not be addressed in the Court’s Findings and Conclusions in the Termination of Parental Rights decision.

Karen filed a notice of appeal on January 14, 2009. The notice stated she was appealing from the “order terminating the parent-child relationship or dismissing a petition to terminate the parent-child relationship entered pursuant to Iowa Code section 232.117 on the 17th day of December, 2008.”

As a preliminary matter, the State argues that Karen’s appeal was untimely. We will begin with that issue.

II. Timeliness of Appeal

A timely appeal is mandatory and jurisdictional. *See Madyun v. Iowa Dist. Ct.*, 544 N.W.2d 441, 443 (Iowa 1996); *Milks v. Iowa Oto-Head & Neck*

Specialists, P.C., 519 N.W.2d 801, 803 (Iowa 1994). For appeals from termination of parental rights rulings, the timeliness of an appeal is governed by Iowa Rule of Appellate Procedure 6.101(1)(a). That rule states in pertinent part:

A notice of appeal from a final order or judgment entered in Iowa code chapter 232 termination-of-parental-rights or child-in-need-of-assistance proceedings must be filed within 15 days after the filing of the order or judgment. However, if a motion is timely filed under Iowa R. Civ. P. 1.904(2) or Iowa R. Civ. P. 1.1007, the notice of appeal must be filed within 15 days after the filing of the ruling on such motion.

Based on this rule, Karen had fifteen days from December 17, 2008, to file a notice of appeal if she did not file a rule 1.904(2) motion. Because she filed a rule 1.904(2) motion, she elected to avail herself of the exception authorizing an extension of the appeal deadline. Her notice of appeal was filed within fifteen days of the court's denial of her second rule 1.904(2) motion, but not within fifteen days of the termination ruling.

While the file-stamp dates of the pertinent filings would suggest Karen's appeal was timely, the State contends we must look beyond those dates to the substance of Karen's second rule 1.904(2) motion to determine whether that motion properly extended the appeal deadline. In the State's view, the second motion was in fact a "rehash" of Karen's first rule 1.904(2) motion and, for that reason, could not be used to extend the deadline.

"[S]uccessive and repetitive" rule 1.904(2) motions will not toll appeal deadlines. *In re Marriage of Okland*, 699 N.W.2d 260, 266 (Iowa 2005) ("[A] rule 1.904(2) motion filed by a party following a denial of the party's prior rule 1.904(2) motion is improper and cannot extend the time for appeal if the judgment remained unchanged following the first motion."); *Bellach v. IMT Ins. Co.*, 573

N.W.2d 903, 904–05 (Iowa 1998) (“A motion relying on [rule 1.904(2)], but filed for an improper purpose, will not toll the thirty-day period for appeal . . .”). Although Karen filed two Rule 1.904(2) motions, one was before the termination hearing and one was after. Because the district court did not mention the jurisdictional issue in its final termination ruling, we conclude Karen’s second motion was simply an effort to ensure that the jurisdictional issue was preserved for review. Under the unique facts of this case, we conclude Karen’s second rule 1.904(2) motion extended the time for filing a notice of appeal and the notice of appeal was timely.

In reaching this conclusion, we have considered the fact that Karen’s appeal potentially raises a question relating to the district court’s subject matter jurisdiction, which we have long recognized can be raised at any time. See *Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008); *In re Jorgensen*, 627 N.W.2d 550, 554–55 (Iowa 2001). We will turn to that issue.

III. District Court’s Jurisdiction

The mother asserts that, since February 2007, she “has had no contact with the State of Iowa save her children and these proceedings.” Based on this assertion, she raises the following challenge to the district court’s jurisdiction:

The trial court erred in finding that under Iowa Code Chapter 598B it has subject matter jurisdiction over the preceding CINA proceedings and subsequently the TPR even though Iowa was not the children’s home state at the time of the initial custody determination and even though at the time of the initial custody determination there was no emergency.

Iowa Code section 598B.102 defines “home state” as a state in which a child lived with a parent for “at least six consecutive months immediately before the commencement of a child-custody proceeding.” This definition governs which among several states shall have jurisdiction to make an initial child-custody determination. See Iowa Code § 598.201 (2007). Another provision affords a court “temporary emergency jurisdiction” over children, as follows:

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

Id. § 598B.204(1).

When the State filed its application for temporary removal in 2005, it alleged that the children lived in Denison, Iowa. The children’s mother appeared at the post-removal hearing and did not contest that assertion. She appeared again at the adjudicatory hearing and did not dispute the location of the children. Indeed, she stipulated that the State’s evidence, if proffered, would establish that her children were children in need of assistance. Based on this record, we have no trouble concluding that the district court had temporary emergency jurisdiction over the children in 2005, when the State filed its application to have them temporarily removed. See *In re E.A.*, 552 N.W.2d 135, 138–39 (Iowa 1996).

The question then becomes whether the district court was authorized to continue acting under the authority of its temporary emergency jurisdiction through the termination of parental rights proceeding. Section 598B.204 also speaks to this issue, stating:

If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 598B.201 through 598B.203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

Iowa Code § 598B.204(2).

The record discloses that an action was filed in Illinois to address the relationship between the mother and her boys, but this action was dismissed before the Iowa child-in-need-of-assistance action was commenced. Based on this record, we conclude Iowa's initial child-custody determination remained in effect and became the final determination, Iowa became the children's home state, and the Iowa district court had continuing jurisdiction to issue orders in the CINA proceeding and in the subsequent termination proceeding. *See In re R.E.*, 462 N.W.2d 723, 725 (Iowa Ct. App. 1990) ("In reality, this termination proceeding merely constituted a continuation of the CHINA proceeding.").

Karen also contends that the district court did not have personal jurisdiction over her in the termination proceedings. This issue was waived. Karen received notice of the CINA proceedings and appeared and participated in them. Her actions were sufficient to confer personal jurisdiction in the CINA and termination proceedings. *See R.E.*, 462 N.W.2d at 725 ("Because the mother can be reasonably expected to know of the continuing nature of the CHINA proceeding, she should be on notice of this termination proceeding as well.").

As Karen's jurisdictional challenges to the termination ruling have failed and she does not challenge the merits of that ruling, we affirm the termination of her parental rights to the two children.

AFFIRMED.