

IN THE COURT OF APPEALS OF IOWA

No. 9-571 / 09-0781

Filed July 22, 2009

**IN THE INTEREST OF A.D., A.D., AND R.D., III,
Minor Children,**

J.M.D., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from the juvenile court order modifying a prior
dispositional order. **AFFIRMED.**

Melody J. Butz of Butz Law Offices, P.C., Cedar Rapids, for appellant
mother.

John Bishop, Cedar Rapids, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant
County Attorney, for appellee State.

Judith Jennings Hoover, Cedar Rapids, for minor children.

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

VAITHESWARAN, P.J.

Jessica has three children, born in 2003, 2004, and 2007. The older two children were adjudicated in need of assistance in 2005 based on several issues including Jessica's mental health diagnoses. These children and their mother lived with Jessica's maternal grandparents. Meanwhile, Jessica gave birth to the youngest child. In late 2008, she moved out of her grandparents' home, taking the youngest child with her.

The State filed a child-in-need-of-assistance petition with respect to the youngest child, citing "Jessica's lack of nurturing behavior for [the child's] older siblings, as well as her mental instability." The State also alleged that the child was absent from protective day care and Jessica had not taken her to a doctor's appointment. The State asserted:

The Department [of Human Services] has provided short-term voluntary services to Jessica in regards to [this child] but will be unable to do so after the end of November. The Department has directed Jessica to utilize protective day care and to use caretakers only approved by the Department. Jessica has not followed this expectation, which leaves DHS with concerns about who is caring for [the child], especially while Jessica is working.

At about the same time, the State also applied to modify prior dispositional orders with respect to the older two children. The State noted that the most recent order placed custody of these children with their mother "conditioned upon the children and their mother continuing to live in the home of Jessica's grandparents." The State alleged, "[T]he issues that brought these children to the attention of the Department are not yet resolved and the Department does not believe Jessica is prepared to have all three of her children in her physical custody at this time."

The juvenile court scheduled a combined hearing on the child-in-need-of-assistance petition and the modification application. Jessica did not appear at the hearing. At the end of the hearing, the court adjudicated the youngest child a child in need of assistance and immediately granted the Department custody for foster or relative placement. In a subsequent order, the court issued detailed findings of fact and conclusions of law supporting its earlier adjudication of the youngest child and supporting a change in the disposition with respect to the older children, as requested by the State.

On appeal, Jessica contends (1) the juvenile court should have postponed the hearing, (2) the juvenile court erred in ordering disposition of the youngest child “without first adjudicating her a child in need of assistance,” (3) the juvenile court erred in modifying the prior dispositional order relative to the older two children, and (4) trial counsel provided ineffective assistance.

I. At the beginning of the hearing, Jessica’s attorney asked for a postponement of the hearing based on the following reason:

I have had no contact with my client since when we were here for the final pretrial conference So I guess that is the basis for requesting the continuance and a motion to withdraw, because as a result of that lack of contact, . . . she has rendered counsel’s job unreasonably difficult. And so I am requesting that the court allow me to withdraw.

After ensuring that Jessica received notice of the proceedings, the juvenile court denied the motion and proceeded with the hearing.

At the hearing, an employee of a county health program testified that Jessica called her that morning and told her she “had not taken her meds for the last couple of weeks and she took her meds last night and she passed out and

forgot that she had court this morning.” When the employee asked Jessica if she would be coming to the afternoon court session, Jessica hung up on her. Jessica later called the employee again and repeated the statements she made earlier. She also said that she did not feel like herself, did not want to get out of bed, and thought she may have had a “psychotic break” the night before.

There is no question that Jessica’s mental health diagnoses and her noncompliance with treatment regimens affected her actions. But it is also clear that Jessica had time to seek a postponement before the hearing began or at the end of the morning session, or had time to appear at the afternoon session. Jessica took none of these actions. Based on this record, we conclude the juvenile court did not abuse its discretion in denying her attorney’s request for a postponement. See *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

II. Jessica next contends that the juvenile court entered a dispositional order with respect to the youngest child without first adjudicating her a child in need of assistance. As noted, the juvenile court adjudicated the youngest child in need of assistance immediately after the hearing, even though the final ruling was issued later. Therefore, the procedural irregularity Jessica complains of is simply not present.

III. Jessica asserts that the juvenile court should not have modified the dispositional order relating to the older two children to have them placed in the custody of the Department of Human Services. On our de novo review, we disagree.

Jessica left the older two children with her grandparents when she moved out of their home. The county home health care employee who worked with

Jessica for approximately two years opined that Jessica had not gained the ability to care for all three children. A guardian ad litem similarly recommended that Jessica no longer have physical custody of these children. Finally, a community-based social worker who assisted Jessica and the youngest child expressed concern about Jessica's alcohol use, noting that she was also taking ten to eleven medications. Based on this record, we conclude the juvenile court acted appropriately in modifying the dispositional order to have the older children placed in the custody of the Department for foster care or relative placement.

IV. Jessica finally claims that trial counsel was ineffective but cites no acts or omissions that amounted to ineffective assistance. Accordingly, we conclude the claim is too vague to address.

AFFIRMED.