

IN THE COURT OF APPEALS OF IOWA

No. 9-779 / 09-1204
Filed October 21, 2009

**IN THE INTEREST OF A.K.S.,
Minor Child,**

**R.R.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A mother appeals the termination of her parental rights to her daughter.

REVERSED AND REMANDED.

Kathryn J. Salazar of Day, Meeker, Lamping, Schlegel & Salazar, Washington, for appellant mother.

Jeffrey L. Powell of Tindal Law Office, P.L.C., Washington, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee State.

Katherine Lujan of Lloyd, McConnell, Davis & Lujan, Washington, for minor child.

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

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to her four-year-old daughter.

I. Background Facts and Proceedings

Robin and Tom are the parents of A.K.S., born in 2004. In 2006, the Department of Human Services learned that Tom was on the sex offender registry and had served prison time for sexually abusing a daughter from a different relationship. Because Tom was living in the same home as Robin and A.K.S., the department began an investigation of the family.

Although Robin married Tom during the investigation, she agreed to move out of the family home. Various complaints surfaced about Robin's care of the child. These complaints, which ranged from leaving the child in a van to giving the child a black eye, were deemed unfounded or not confirmed.

The department continued to monitor Robin and A.K.S. A department employee reported that Robin stayed at home with A.K.S. and tended to her daily needs. The employee observed that she was a "happy and well adjusted child." However, because Robin allowed Tom to live in the same home despite her knowledge of his background, the department issued a founded report against her for denial of critical care and recommended that A.K.S. be adjudicated a child-in-need-of-assistance, with her mother having custody.

The juvenile court temporarily removed the child from the parents but granted the department's request to place her in Robin's custody. The department continued to afford Robin services. The department assisted her in finding an apartment and, after she moved in, concluded that Robin had

“appropriately” and “nicely” furnished it. The department further concluded that it was “appropriate” to return A.K.S. to her care. After three months in foster care, A.K.S. was reunited with her mother.

The case proceeded to an adjudicatory hearing. Following the hearing, the juvenile court cited the “unacceptable risk” of “allowing Tom to be around [his] minor daughter unsupervised for any period at all, no matter how brief,” but stated there was “no evidence of any improper contact between [A.K.S.] and Tom.” The court also cited “no concerns with regard to [A.K.S.’s] care except for the fact that Tom is a registered sex offender.” The court ordered Robin not to allow any unsupervised contact between Tom and the child.

Over the next year, the department continued to have regular contact with Robin and the child. A worker reported that A.K.S. appeared “happy and healthy, with no known mental/health concerns.” The department continued to recommend that custody of A.K.S. remain with Robin.

In March 2008, the department received a complaint that Robin was meeting Tom at a friend’s house in the presence of A.K.S. and in violation of the court order. The department investigated the allegation and determined it was “founded.” As a result, the juvenile court granted the State’s request to have A.K.S. removed from Robin’s care and the child was transferred to foster care.

Meanwhile, Robin cooperated with the services the department afforded her. She participated in supervised visits with the child, accepted parenting assistance, and continued joint sex offender therapy despite the fact that she was not the offender and Tom had stopped attending. She also obtained a no

contact order against Tom and sought a divorce from him, as well as sole custody of the child.

As of September 2008, the department advised Robin to continue with visitation at the discretion of the department, continue to meet on a weekly basis with the sex offender therapist, continue to participate in family services, finalize the divorce, abide by the no contact order, and undergo a psychological evaluation. Robin complied with these expectations. She regularly attended supervised visits, met with the sex offender therapist, participated in parenting services that were incorporated into the supervised visits due to the service provider's workload, and finalized the divorce.

Following the psychological evaluation, the evaluator diagnosed Robin with mild mental retardation but noted no "acute psychological distress that would impede her ability to parent children." Although he criticized Robin's practice of disciplining A.K.S. by spanking her with an open palm approximately twice a week, he noted no history of abuse and stated that Robin appeared to care for her daughter. He recommended a continuation of parent-skills training to identify other ways to discipline the child. In a subsequent evaluation, he again noted Robin's borderline intellectual functioning and once more recommended a continuation of parenting services.

The only wrinkle in Robin's efforts to comply with services related to her relationship with the sex offender therapist. Robin perceived her as being demeaning and humiliating and asked the department for a different therapist. A department employee brought her request to the attention of others in the department but did not find Robin a new therapist. Accordingly, Robin's attorney

raised Robin's concerns with the court. After the juvenile court authorized her to explore other therapy options, Robin's attorney found her another therapist, who treated Robin twelve times prior to the termination hearing.

In April 2009, the State petitioned to terminate Robin's parental rights to A.K.S., citing "her intellectual functioning and her ability to protect [A.K.S.] from harm, specifically including protecting [A.K.S.] from being in contact with her father." The State separately petitioned to terminate Tom's parental rights to A.K.S. That petition was granted and this court recently affirmed the decision. See *In re A.K.S.*, No. 09-1037 (Iowa Ct. App. Sept. 2, 2009). The juvenile court proceeded with independent hearings as to Robin and, in July 2009, granted the State's petition. This appeal followed.

On appeal, Robin contends the juvenile court erred in finding (1) "reasonable efforts for reunification had been provided to [her] and in not continuing the case six months to allow for these efforts to take place," (2) "the termination was in the best interests of [the child]," and (3) "clear and convincing evidence the child could not be returned to [her] home." Reviewing the record de novo, we find the second ground for reversal dispositive.

II. Best Interests

It is axiomatic that termination of a parent's rights must be in the child's best interests. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). At first blush, Robin's association with a registered sex offender would suggest that termination was in the child's best interests. However, on closer inspection of the record, we are not persuaded that this standard was satisfied.

First, Robin did everything in her power to disassociate herself from Tom. As noted, she obtained a no contact order and a divorce from Tom. She was also careful not to fraternize with anyone who was friends with Tom. Indeed, she testified that she stopped relying on a woman who provided her with positive support because that woman maintained a relationship with Tom. She also testified that the contact precipitating the child's removal from her care in March 2008 was accidental, as Tom frequented the same places that she did.

Second, Robin fostered a close bond with A.K.S. The department's worker conceded this fact, as did the individual who supervised visits. The visit supervisor testified that the child asked about her mother on the way to visits and was excited when she saw her mother. She stated there was lots of hugging and kissing when they met. As for the child's conduct during the visits, she testified it was "typical three or four-year-old behavior."¹ Notably, Robin's therapist testified that severance of Robin's ties with A.K.S. would be "devastating." She continued, "I think it would just be very crushing to her to lose [A.K.S.]."

Finally, Robin continued to provide for the child's basic needs, including housing, food, and appropriate care. She lived in the same apartment the department approved for her in 2006, took care of her own finances, and prepared meals and snacks for the supervised visits. The department's case manager conceded that the agency no longer had any concerns about Robin's abilities in these areas.

¹ The department case manager testified that, as A.K.S. grew older, there would be more of an opportunity for the child to manipulate the mother. We find scant evidence to support this basis for termination.

The case for termination turned on Robin's ability to keep the child safe from Tom. The department relied on an October 2008 incident in which a service provider asked to see Robin's phone and discovered text messages between Tom and Robin. From this incident, the department surmised that Robin would not abide by the admonition to keep A.K.S. away from Tom. However, Robin explained that she simply contacted Tom to see if she could retrieve some of her belongings from the home she once shared with him. Additionally, a department case manager conceded the absence of any evidence that Robin facilitated contact between Tom and A.K.S. after March 2008. Finally, the case manager acknowledged that Robin never showed a lack of interest in cooperating or participating in services.

Some of those services were designed to educate Robin on how to keep her daughter safe. Far from denying this was a concern, Robin acknowledged Tom was a threat to the child and represented that she wanted to continue working on safety issues with her current therapist.

Robin's representation was confirmed by her therapist who testified that Robin was "very motivated to get [A.K.S.] back," and was "willing to do whatever needs to be done for that to happen."² She continued, "[s]he definitely wants [A.K.S.] back but she loves her child and doesn't want anything bad to happen to

² The sex offender therapist who first treated Robin seconded this opinion, stating Robin "made it very clear that she loves her daughter and was willing to make sacrifices in order to have her." While she stated that Robin did not internalize what she was learning, there was some question about whether the therapist worked with Robin at her level of intellectual functioning. Additionally, the therapist acknowledged that most of the time she worked with Robin, Robin was still married to Tom and her goal was to simply get Robin to understand the characteristics of sex offenders. Robin's current therapist, in contrast, presented Robin with various scenarios and worked with her to formulate appropriate responses.

her.” While she stated Robin lacked abstract thinking, she said Robin could parent without that function “if she had a strong support system around her, someone responsible that she could check in with . . . if she had any questions.”

The department case manager testified that Robin lacked this support system, but few steps were taken to assist her in developing one. For example, when Robin realized that she could not rely on the friend who had helped her because that friend was not willing to sever her ties to Tom, Robin approached a church for assistance. When that contact was unsuccessful, the department did not apprise Robin of other community support services.

The department also declined to furnish or pay for services that would have truly tested Robin’s ability to keep A.K.S. safe. Although Robin repeatedly asked for semi-supervised or unsupervised visits, those requests were denied despite evidence that Robin parented the child for years without incident. When asked about those denials, the department case manager cited “the lack of progress that she was making in the sex offender therapy or programming that she was participating in.” She stated, “I think her cognitive abilities provide limitations to her to be able to keep the child safe, so I do believe that termination is in the best interest of the child.”

We believe the department could have compensated for these limitations by providing services tailored to reunification and tailored to Robin’s specific needs. The department did so in the early stages of these proceedings by helping her find an apartment, performing “spot-checks” of Robin in her apartment, monitoring her interactions with the child, and by finally allowing her to parent the child independently. Because Robin came to recognize the harm

Tom posed to the child and followed through with therapy and other services aimed at protecting the child from this harm, we conclude it is in the child's best interests to postpone the termination of Robin's parental rights for six months to test her ability to parent the child independently. See Iowa Code § 232.104(2)(b) (2009). While we find it unnecessary to determine whether the department satisfied its mandate to make reasonable efforts toward reunification, the record suggests that, at a minimum, Robin should be afforded assistance with therapy and semi-supervised or unsupervised visitation or trial-home placements, assuming she continues to keep A.K.S. away from Tom.

We reverse the termination of Robin's parental rights to A.K.S. and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.