IN THE COURT OF APPEALS OF IOWA

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No. 1999-299 (9-529) / 99-160
Filed October 15, 1999

IN THE INTEREST OF
A.L., L.L., H.L., and J.L.,
Minor Children,

T.W., Mother,

Appellant.

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

Mother appeals from the juvenile court order removing her youngest two children from the home. **AFFIRMED.**

Lucy E. Harrington, Cedar Rapids, for appellant.

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

John J. Bishop, Cedar Rapids, for appellee-father H.L.

Mary Chicchelly of Seidl & Chicchelly, Marion, guardian ad litem for minor children.

Considered by Huitink, P.J., Mahan, J., and Honsell, S.J.*

***Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).**

HONSELL, S.J.

T.W. is the mother of L.L., A.L., H.L., and J.L. The father of L.L. and A.L. is Dan. H.L.'s father is James and J.L.'s father is Don. H.L. is developmentally delayed and had mild mental retardation. Both H.L. and J.L. have been diagnosed with attention deficit hyperactivity disorder. They have been placed on medication for this condition.

T.W. first became involved with the Department of Human Services (DHS) in 1986, when a founded report was issued stating she had denied critical care to L.L. In 1988, DHS issued a founded report of denial of critical care for failing to provide adequate food and shelter for L.L. and A.L. The children were placed in foster care for a period of time.

After the children were returned to T.W., a third founded report of denial of critical care was issued in 1989. The children were allowed to bathe without adequate supervision and H.L. was burned by hot bath water. Also, in 1989, DHS issued a founded report of sexual abuse by omission against T.W. for failing to protect L.L. from sexual abuse by J.L.'s father. The children were removed from T.W.'s care in 1989. They were adjudicated to be children in need of assistance (CHINA).

T.W. participated in mandated services and the children were returned to her care in 1990. Later that year, DHS issued a founded report of denial of critical care against her because she failed to obtain adequate medical care for H.L. when she developed bronchitis. Eventually the case was closed.

T.W. is now married to Mark. In April 1998, DHS received a report T.W. had hit all four children with a belt. Two of them had bruises. While the case was being investigated, Mark hit H.L. giving her a bloody nose. DHS issued a founded report T.W. had physically abused A.L. and H.L. DHS also issued a founded report of physical abuse of H.L. by Mark. The children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(1), and (c)(2).

In June 1998, L.L. and A.L. were by court order placed in the home of their father. H.L. and J.L. remained with T.W. In July 1998, DHS issued a founded report of denial of critical care, finding T.W. and Mark had not adequately supervised H.L. and J.L. On several occassions the children had started fires and smoked cigarettes. T.W. and Mark had not kept their cigarettes and lighters in a place inaccessible to the children.

The family received family-centered services, which included therapy, counseling, skill development, and supervision. DHS required the children to be constantly supervised. T.W. was not able to follow through with this and there were several incidents where the children were unsupervised. J.L. stole some money from Mark. There were also incidents where the children had access to cigarettes. T.W. was told that if the children were sleeping upstairs, either she or Mark should be upstairs. She then required H.L. to sleep on the floor at the top of the stairs so she could watch television in the evening. It also is apparent T.W. had problems with truthfulness.

In August 1998, the State filed an application to modify the dispositional order seeking to place H.L. and J.L. out of the home. A hearing on the matter was set for October 1998. Additional time was needed for the presentation of testimony, and the matter was continued to December 1998.

On December 29, 1998, the juvenile court entered an order removing H.L. and J.L. from T.W.'s care. The court found that despite the provision of ongoing protective services, the children continued to be at risk of harm in the mother's home. H.L. was placed in the care of her father. J.L. was placed in foster care. The court determined L.L. and A.L. should continue in the care of their father.

I. Our scope of review is de novo. *In re L.K.S.*, 451 N.W.2d 819, 821 (Iowa 1990). We review the facts and the law and adjudicate the rights of the parties anew on those issues properly preserved and presented to us. *In re L.B.*, 530 N.W.2d 465, 467 (Iowa App. 1995). Although we are not bound by the juvenile court's findings of fact, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. T.W. contends the juvenile court order should be reversed because the court failed to find there was a substantial change in circumstances since the dispositional order which would warrant removing the children from the home.

We do not believe that T.W. has preserved this issue for appellate review. She did not file a motion pursuant to Iowa Rule of Civil Procedure 179(b) seeking to

enlarge the juvenile court decision. Rule 179(b) has been applied to CHINA proceedings. *See In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994). An issue not presented in the juvenile court may not be raised for the first time on appeal. *In re R.J.*, 495 N.W.2d 114, 117 (Iowa App. 1992).

Regardless, the court correctly found the State had met is burden by clear and convincing evidence showing the children should be removed from the custody of their mother because they continued to be at risk of harm in her care. The evidence clearly shows the change of circumstances.

III. T.W. claims the State did not present sufficient evidence to support removing the children from the home. The statutory criteria for determining whether a child shall be removed from the home include whether

> the child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

In re C.L.H., 500 N.W.2d 449, 452 (Iowa App. 1993) (quoting Iowa Code § 232.102(5)(b)).

T.W. points out that even though the children were not supervised all of the time, they were not harmed, and asserts the State did not show the children could not be protected from harm.

The State has a duty to see every child within its borders receives appropriate care and treatment. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). Our statutes regarding children in need of assistance are preventative as well as remedial. *In re*

L.L., 459 N.W.2d 489, 494 (Iowa 1990). Their goal is to prevent probable harm to the child; they do not require delay until after the harm has happened.

The State presented sufficient evidence of probable harm to the children if they remained in the home. The children had shown a propensity to engage in dangerous behavior by setting fires and smoking cigarettes. T.W. did not adequately supervise the children and did not consistently place her cigarettes and lights in a location inaccessible to the children. There were also concerns because the mother was not honest with service providers, and it was not known how many fires had actually been set in the home. Therefore, the children were properly removed from the home under section 232.102(5).

IV. T.W. asserts the State did not engage in reasonable efforts to prevent the need to remove the children from the home. She requested information regarding individual counseling. She also requested information on how to obtain a new service provider. She claims DHS should have honored these requests.

Under section 232.102(5), the State must make reasonable efforts to prevent the removal of a child from the home. *In re L.T.*, 494 N.W.2d 450, 453 (Iowa App. 1992). Services should be challenged when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

T.W. did not ask for additional or other services at the time the case permanency plan was entered. Therefore, we question whether she has preserved error on this issue. Even is the issue was preserved, we determine the services

provided were reasonable under the facts of the case. The family received family-centered services, which included therapy, counseling, skill development, and supervision.

V. T.W. contends removal from her home was not in the children's best interests.

In determining the best interests of a child, a court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We find removal from the home is in the children's best interests. T.W. was unable to adequately supervise the children and they were placed in danger by their behavior. She has not admitted to her parenting deficiencies. She told the children DHS was in the home because they were bad. The children need to be in a safe environment.

We affirm the decision of the juvenile court removing H.L. and J.L. from their mother's care.

AFFIRMED.