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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-091 / 93-1712

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

W.S., Mother,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Court Judge.

The mother appeals from a juvenile court order terminating her parental rights to her daughter. **AFFIRMED.**

Michael M. Lindeman, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Charles K. Phillips, Assistant Attorney General, and Dan Block, Assistant County Attorney, for appellee State.

Diane Ruisch Larson, Waterloo, attorney and guardian ad litem for minor child.

Considered by Donielson, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

The sole question in this appeal is whether there is clear and convincing evidence supporting a finding the parental rights of Wanda to Ashley, born August 20, 1992, should be terminated. The father of Ashley voluntarily terminated his parental rights. The juvenile court ordered termination of Wanda's parental rights. We affirm.

There is integrity in the family unit. In re Wall, 295 N.W.2d 455, 457 (Iowa 1980). We review de novo. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The state must prove by clear and convincing evidence the grounds for termination. Santosky v. Kramer, 455 U.S. 745, 769, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599, 616 (1982).

Wanda was born December 26, 1974. Wanda was adopted by her current parents when she was five years old. Prior to the adoption, Wanda had been in eight to ten different foster homes. Wanda knows little about her biological family. Wanda had difficulty with her adoptive parents. She spent two and one-half years of her early teen years in the custody of the Department of Human Services in youth shelters, group homes, and the Iowa Juvenile Home. In August 1991, Wanda returned to her adoptive parents and became pregnant. She named two possible fathers--one man is about twenty-nine years old and the second man is about twenty-four years old. In May 1992, Wanda was placed in a residential teenage parenting program in Cedar Rapids. Ashley was born while Wanda was in the program, and Wanda and Ashley continued in the program until November 20,

1992, when Ashley was placed with a foster care family. Ten days later, Wanda was discharged from the program. The juvenile court proceeding concerning Wanda was dismissed. Wanda had been under the jurisdiction of the juvenile court since March 1990.

Wanda lived in a series of homes after she left the parenting program and had a number of romantic relationships. Wanda received little or no support or help from her adoptive parents. At the time of the termination hearing, Wanda was again pregnant.

Ashley suffered developmental delay and failure to thrive in Wanda's care. These problems were considered in the decision to remove Ashley from Wanda's care. Ashley exhibited the same symptoms in foster care. By seven and one-half months, Ashley's skills were those of a three-month-old, and it was then determined she needed special care.

In May 1993, Ashley had genetic testing. The clinical diagnosis was Ashley had Cornelia de Lange Syndrome. Ashley's height and weight were below the fifth percentile. Ashley's brain has all parts but does not develop normally and does not send signals correctly. Other cells in her body do not function properly. It was the opinion when Ashley was tested that she would be moderately to severely mentally retarded, but further testing could not be done until she was three years old. It was also determined Ashley would never be independent,

would need constant care, and there was a probability she would have seizures and be susceptible to pneumonia and other respiratory infections which could be terminal.

Throughout this child in need of assistance proceeding, Wanda's behavior has been typical of a disturbed, immature, mentally-slow teenager. Wanda also is frequently depressed and frustrated.

Wanda argues the record does not show she suffers from substance abuse or she intentionally abused or abandoned Ashley. Wanda advances there is evidence she has adequately provided care for other children. She said if Ashley is returned to her, she will accept supervision from the Department of Human Services and will follow their plans. Wanda said many of her problems were the result of her immaturity and deficient upbringing but she believes she can mature and be a supportive and nurturing parent to Ashley.

Wanda argues she did not perform all the conditions of the contract she entered with the Department of Human Services because some of the requirements were not within her reach. She points particularly to the requirements of the plan that required her to get an apartment and maintain it and seek and maintain full-time employment. Wanda argues her age and limited education make attaining these goals difficult.

We agree with Wanda that these requirements may well be beyond her reach without help from the department. We also

agree that maintaining full-time employment should not be a necessary requirement for having custody of Ashley returned to her. We also recognize, although not advanced by Wanda, the State is required to show reasonable efforts have been made to prevent the removal of this child from her parents. See In re B.L., 491 N.W.2d 789, 791-93 (Iowa App. 1992); In re A.W., 464 N.W.2d 475, 478 (Iowa App. 1990); In re M.H., 444 N.W.2d 110, 113 (Iowa App. 1989).

The problem is the arguments Wanda makes come too late. If Wanda did not feel the contract presented her by the department for the return of Ashley was fair and it did not contain reasonable and attainable goals and did not assure the agency was offering reasonable services to assist in the return of Ashley to her care, the issue should have been raised with the agency before Wanda signed the contract. If the issue could not have been resolved with the agency, the issue should have been raised in juvenile court. The juvenile court has the responsibility to determine whether the agency was making reasonable demands and offering reasonable services. In re C.D., 508 N.W.2d 97, 100 (Iowa App. 1993). It is too late to raise these issues for the first time at the termination hearing. Id. at 101.

In our de novo review, we have not considered the fact Wanda was not, on her own, able to rent and maintain an apartment and obtain and maintain full-time employment. Even excluding this evidence, the record supports a finding

by clear and convincing evidence that Ashley cannot be returned to Wanda's care. We agree with the juvenile court's finding Wanda has lived in fourteen different places and had a series of relationships since Ashley was removed from her care. This, coupled with Wanda's indifference toward many scheduled visitations and her inability to develop structure in her life, support termination of her parental rights.

We can only hope Ashley will realize more success under state care than Wanda realized. The juvenile court termination order recited the adoption worker from the Department of Human Services testified that, notwithstanding Ashley's severe difficulties, there are families who are willing to adopt special-needs children. The juvenile court found adoptive families are more willing to work with infants and toddlers than with older children. The juvenile court also recited the guardian ad litem representing the child throughout the proceedings recommends the child be freed for adoption. Like the juvenile court, we rely on the guardian ad litem's recommendation. See In re J.V., 464 N.W.2d 887, 892-93 (Iowa App. 1990).

The juvenile court made no finding as to the possibility of the child finding an adoptive home able to meet her special needs. We cannot on this record make any determination as to whether this child will or will not be adopted. We can only trust the guardian ad litem, who has

recommended this termination so the child can be adopted, will continue to take his responsibility to this child seriously and continue to monitor the situation and be certain all efforts are made to find the adoptive home he recommended Ashley have.

AFFIRMED.

Donielson, C.J., concurs; Hayden, J. specially concurs.

HAYDEN, J. (concurring specially)

I concur in the result.