IN THE COURT OF APPEALS OF IOWA

No. 0-566 / 00-0435
Filed December 22, 2000

FILED
DEC 22 2000
CLERK SUPREME COURT

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

L.A., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, District Associate Judge.

Mother appeals from an order terminating her parental rights to her daughter. She contends the court erred in finding the State had provided reasonable services to preserve the family unit and in allowing the admission of certain hearsay evidence. She also contends the order is invalid in that it violates due process. **AFFIRMED.**

Timothy G. Goen of the Goen & Goen Law Office, Dyersville, for appellant.

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

Patricia Reisen of the Kintzinger Law Firm, Dubuque, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Lisa, the mother of Tiffany, born in February of 1999, appeals from an order terminating her parental rights. Lisa contends (1) reasonable services to preserve the family unit were not provided; (2) the juvenile court considered inadmissible hearsay evidence; and (3) she was denied right to due process guaranteed under the United States and Iowa Constitutions. We affirm.

Lisa, though twenty years of age, was ill-equipped to be a mother. She through no fault of her own had an extremely traumatic childhood. She was sexually abused by her birth father when she was six years old and severely abused by four men when she was ten. She began mental health treatment at age six and was placed in foster care soon after her tenth birthday. Shortly thereafter she was hospitalized because of her violent outbursts. She has a history of angry, belligerent, oppositional and defiant behaviors. She has been hospitalized and institutionalized for mental problems and in her youth lived in a series of foster homes. She has exhibited suicidal and homicidal behavior. She has been on a series of medications but continues to have recurring problems. She drank heavily during her pregnancy. She was abused by her husband who is not Tiffany's father.

By the time Tiffany was two months old it was reported she was left alone in the home for several hours and was shaken in an inappropriate manner. Lisa was to have said, "If I have to spend one more night with this baby, I will break every bone in the child's body."

On April 19, 1999 the State filed a Child in Need of Assistance petition under Iowa Code sections 232.2(6)(b), (6)(c)(2) and (6)(n) (1997). A removal hearing was held on April 23, 1999. It was continued until May 3, 1999 because Lisa was hospitalized under an emergency commitment order. On May 3, 1999 the State and Lisa's attorney agreed Tiffany should remain out of Lisa's home. The juvenile court advised Lisa that failing to identify a deficiency in the services offered or to request additional services might preclude her from challenging the sufficiency of the services in a termination of parental rights proceeding.

On June 4, 1999 Tiffany was found to be a child in need of assistance as defined by Iowa Code sections 232.2(6)(b), (6)(c)(2) and (6)(n) (1997). Lisa was granted supervised visitation. On October 11, 1999 a petition to terminate Lisa's parental rights was filed alleging Lisa's parental rights to Tiffany should be terminated under Iowa Code section 232.116(1)(g). On the same date a dispositional review hearing was held. At the hearing Lisa objected to the requested immediate reunification. She also requested (1) increased visits in her home; (2) that the case not move to permanency; (3) that she be given help obtaining appropriate housing and that she receive additional reunification services.

The court specifically found Lisa was (1) receiving help with parent skill development, (2) had extensive visitation, and (3) received mental health services. The court went on to order reunification services to continue and included parent skill development and supervised visitation. The court further ordered Lisa to comply with the case plan, obtain an updated psychological and

psychiatric evaluation, continue mental health treatment and not miss scheduled appointments for treatment or visits.

On February 10, 2000 the juvenile court terminated Lisa's parental rights to Tiffany under Iowa Code section 232.116(1)(g). The court found Lisa's extreme emotional and physical volatility had not been adequately treated or resolved because Lisa had failed to comply with court-ordered mental health treatment. The court also found Lisa had not followed through with services offered. The court determined Lisa had made no significant progress and it was in Tiffany's best interests to terminate Lisa's parental rights.

We review termination proceedings de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). We may review the facts as well as the law and adjudicate a parent's right anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Lisa first contends reasonable efforts were not made by the State to provide her with services that would in turn lead to reunification with Tiffany. Lisa requested increased visitation and more reunification services at the October 11, 1999 dispositional hearing.

The State contends error was not preserved on this issue because Lisa did not appeal the juvenile court's October 11, 1999 order addressing this issue. We disagree.

A party may not appeal without a final judgment. Iowa R. App. P. 1(a); *see also Rowen v. LeMars Mut. Ins. Co.*, 357 N.W.2d 579, 581 (Iowa 1984); *Knauss v. City of Des Moines*, 357 N.W.2d 573 (1984); *Sulzberger Excavating*

Inc. v. Glass, 351 N.W.2d 188, 191 (Iowa App. 1988). The issue of the finality of a juvenile court order was addressed by the court in *In re Long*, 313 N.W.2d 473 (Iowa 1981). In *Long*, the court looked at Iowa Code section 232.133 which provided in relevant part:

> 1. An interested party aggrieved by an order or decree of juvenile court may appeal from the court for review of questions of law or fact.
> 2. The procedure for such appeals shall be governed by the same provisions applicable to appeals from the district court provided that when such order or decree affects the custody of the child the appeal shall be heard at the earliest practicable time.

In *Long*, the court determined the legislature did not intend by enactment of the section that an appeal of right could be taken to the supreme court from any and every interlocutory order or decree entered in juvenile court. *Id.* at 475; *see also In re Clay*, 246 N.W.2d 263, 266 (Iowa 1976) (giving the same interpretation to a prior but similar statute). Rather, the court determined section 232.133 provides no special basis for an appeal of right but, as with all other orders, whether it can be appealed depends on whether the juvenile court order is found to be "final." *See Long*, 313 N.W.2d at 473. The court said, "We hold that an order of adjudication in a CHINA case, unaccompanied by a disposition, is not a 'final' order within the meaning of Rule 1(a)." *Id.* at 474.

A juvenile court order is not final unless it disposes of the issue. *See id.* at 476. A final judgment is one that puts the case out of court and which may be enforced by execution or in some other appropriate manner. *In re Estate of Swanson*, 239 Iowa 294, 305, 31 N.W.2d 385, 391 (1948). An order is interlocutory if it directs an inquiry into a matter of fact preparatory to a final decision. *Williams v. Bourne*, 248 Iowa 189, 194, 79 N.W.2d 751, 754 (1956).

The juvenile court on October 10 found that reasonable efforts were employed prior to Lisa's challenge and made further directives as to future services. The issue of whether the directives as to future services would be followed and their reasonableness in addressing Lisa's problems were to be addressed at future hearings. The October 10 order contemplated subsequent hearings on the delivery of reasonable services would occur. A ruling is not final when the trial court intends to do something further to signify its final adjudication of the case. *In re Marriage of McCreary*, 276 N.W.2d 399, 499 (Iowa 1979). Consequently, the October 10 order was interlocutory under the stated rule. *See Long*, 313 N.W.2d at 476; *see also In re A.C.*, 443 N.W.2d 732 (Iowa App. 1989).

Furthermore, speedy disposition is crucial in CHINA cases. If an order addressing services offered and services to be offered in the future is "a final order," an appeal could delay the court's addressing the issue of termination of parental rights or returning the child home. These issues are those most critical to the child. *See Long*, 313 N.W.2d at 476. Additionally, to allow appeals from such orders would create a multiplicity of appeals and delays in CINA cases where speedy dispositions are in the children's interests. *See In re A.C.*, 443 N.W.2d at 732. It furthers the goal of judicial economy, as well as the goal of making prompt disposition in CINA cases in refusing to hold the October 10 order a final order. *See id.* This conclusion is consistent with previous Iowa case law on the subject. *See Long*, 313 N.W.2d at 476; *see also In re A.C.*, 443 N.W.2d at 732. We therefore address Lisa's contention that reasonable efforts to preserve her family unit were not offered when requested on October 11, 1999.

Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). Generally reasonable efforts must be made to eliminate the need for removal. *See In re M.B.*, 595 N.W.2d 815, 818 (Iowa App. 1999); *see* Iowa Code § 232.102(9)(a) (1997).

Lisa was provided (1) visitation five days per week; (2) mental health evaluation and treatment; (3) parental skill development courses and (4) budgeting and housing assistance. Lisa failed in a number of instances to follow through with the services offered. Lisa was offered reasonable services to unite her with her daughter.

Lisa next contends the juvenile court erred by allowing into evidence case notes of three meetings designed to review the case and make recommendations. She advances the notes were hearsay and irrelevant. She contends generally that she was prejudiced by their admission. The juvenile court admitted the evidence stating Lisa's objections went to the weight to be given the notes.

Parental termination cases are reviewable de novo. *In re S.N.*, 500 N.W.2d at 34. Consequently, the juvenile court should accept offered evidence subject to the objection. *Hughes A. Bagley, Inc. v. Bagley*, 463 N.W.2d 423, 426 (Iowa App. 1990). The question therefore is not whether the juvenile court should have accepted the evidence, but whether the evidence should have been considered by the juvenile court.

Evidence, which under ordinary rules of evidence applicable to a civil trial would be excluded as hearsay, lacking a proper foundation, improper opinion

evidence, or not the best evidence, is admissible in [termination] proceedings and the nature of the evidence is to be considered as it affects its probative value rather than its admissibility. *See In re Adkins*, 298 N.W.2d 273, 278 (Iowa 1980); *Harter v. State*, 260 Iowa 605, 608, 149 N.W.2d 827, 829 (1967); *In re H.R.K.*, 433 N.W.2d 46, 48-49 (Iowa App. 1988).

Reports prepared by social workers as well as other reports and information relied upon by social workers in carrying out their duties and in testifying at the termination hearings have been held to be admissible over hearsay objections. *In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994); *In re K.F.*, 437 N.W.2d 559, 562-63 (Iowa 1989); *In re E.J.R.*, 400 N.W.2d 531, 532 (Iowa 1987); *In re K.M.R.*, 455 N.W.2d 690, 692-93 (Iowa App. 1990). These exhibits and reports are admissible under Iowa Code section 232.96(6), which provides:

> A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

The three meetings reported in the notes were attended by either Lisa's attorney or by Lisa and her attorney. The person making the notes appeared as Lisa's witness. The notes were relevant and material to issues before the juvenile court. The other evidence supporting termination was clear and convincing. The probative value of the evidence outweighs any prejudice.

Lastly, Lisa contends the termination order and certain earlier orders are not valid because they deprived her of due process as guaranteed under the United States and Iowa Constitutions. The State contends error on this issue was not preserved for appellate review.

A parent has the right to due process and a fair trial when the State seeks to terminate parental rights. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa App. 1987); *In re R.B.*, 493 N.W.2d 897, 898 (Iowa App. 1992). Due process requires sufficient notice of the complaint against the parent and of the time of the hearing. *In re D.E.D.*, 476 N.W.2d 737, 739 (Iowa App. 1991).

Lisa claims she was not properly notified of the termination hearing. The termination hearing was set for January 12. Lisa's attorney was notified and returned an acceptance of service of the notice. Notice of the hearing was published. On January 12, 2000, Lisa's attorney made a motion to dismiss for lack of notice to Lisa. The juvenile court found Lisa had been made aware of the hearing and its date and that Lisa's attorney was served and present. The court after finding a lack of technical compliance granted the motion to dismiss but reset the hearing for February 9, 2000. A Nunc Pro Tunc order was filed on January 14, 2000 correcting the earlier order and denying Lisa's motion to dismiss and continuing the hearing and directing proper notice be served on Lisa. Lisa was notified of the February 9 hearing under the directive of Iowa Code section 232.112. She appeared, testified and called witnesses. Lisa has failed to show she was not properly notified of the February 9, 2000 hearing.

We find no merit to Lisa's other claims she was denied due process. We affirm the decision of the juvenile court terminating Lisa's parental rights to Tiffany.

AFFIRMED.