IN THE COURT OF APPEALS OF IOWA

No. 7-119 / 96-1882

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

M.N., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

On appeal from the termination of her parental rights, the mother argues termination was improper because reasonable efforts at reunification had not occurred. **AFFIRMED.**

William J. Bishop of John T. Bribriesco Law Offices, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and William E. Davis, County Attorney, for appellee State.

Janice Hanrahan Roemer, Davenport, for minor child.

Considered by Habhab, C.J., Huitink and Streit, JJ.

STREIT, J.

A mother, suffering from major depression, appeals the termination of her parental rights of her two-year-old son. The mother argues termination was improper because reasonable efforts at reunification had not occurred.

Margaret is the mother of Sheehan, born July 30, 1994. On May 24, 1995, Sheehan was removed from her care and a petition was filed alleging he was a child in need of assistance (CINA). He was adjudicated in need of assistance on August 18, 1995, due to his mother's inability to provide appropriate care, supervision, and shelter.

Margaret has three other children older than Sheehan. She has received services from the Iowa Department of Human Services (DHS) since 1992. Margaret has been diagnosed with major depression and has been offered mental health services, although her attendance for such treatment from February 1994 to January 1996 was sporadic. Margaret received day treatment from January through March 1996, but dropped out when she obtained employment. In July 1996, she resumed seeing her therapist.

Following a termination hearing in January 1996, Margaret's parental rights to two of her older children were terminated and a third child was placed in a guardianship. [Termination Order February 29, 1996.] In that case the court found Margaret's long-term mental health problems had made her unable to take advantage

of services offered by DHS and her parenting skills had not improved. At the time of the January termination hearing, a recommendation was made about using a mental health "case manager" to oversee Margaret and ensure that she was taking her medications and maintaining contact with other agencies. Margaret then began participating in a day treatment program and her mental health counselor felt the program was one that best suited her needs. Participation in that program obviated the need for a case manager.

A petition to terminate Margaret's parental rights to Sheehan was filed on July 24, 1996. A hearing on the petition was held September 19, 1996. At that time, Margaret was pregnant and unable to take medication to treat her mental illness.

Margaret's parental rights to Sheehan were terminated in an order filed September 23, 1996. (The parental rights of Sheehan's putative father were also terminated and are not at issue in this appeal.) The juvenile court found Margaret had major depression and this was a long-term mental health problem. The court noted Margaret had not consistently utilized mental health resources available to her in the past. The court concluded Sheehan would be subject to a risk of abuse or neglect if returned to Margaret's care because of her inattention, lack of recognition, lack of

response, and lack of follow through. The court terminated her parental rights pursuant to Iowa Code sections 232.116(1)(f) (1995)[1] and 232.116(1)(g).[2]

On appeal Margaret argues reasonable efforts were not made at reunification. She contends DHS waited too long to appoint a mental health case manager. She claims that until her underlying mental illness was adequately addressed, it was futile to expect her to comply with the DHS case plan or to provide services directed toward developing her parenting skills.

Appellate review of termination proceedings is de novo. *In re W.G.,* 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. Tauke,* 469 U.S. 1222 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In Interest of T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). *See generally* Iowa Code § 232.102. Generally, the DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code § 232.102(9)(a) (1995). The reasonable efforts concept would broadly include

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[1] Child adjudicated CINA, court has terminated parental rights with respect to another child in the family, the parent continues to lack the ability or willingness to respond to services which would correct the situation, and an additional period of rehabilitation would not correct the situation.

[2] Child is three years of age or younger, adjudicated CINA, removed from physical custody of parent for at least six of last twelve months or last six consecutive months and trial period at home was less than thirty days, and child cannot be returned to the custody of the parent without a risk of adjudicatory harm.

a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal. *Id.*

While the state has the obligation to make the efforts, the parent has a responsibility to demand services prior to the termination hearing. *In Interest of C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1988). Challenges to the plan for reunification should have come when the plan was entered. *In Interest of L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the service plan at the termination hearing. *See id.*

There is no evidence Margaret attempted to raise issue of inadequacies of services or the need for the appointment of a case manager. We recognize a parent suffering from mental illness suffers a disability and may need special accommodations. *Id.* This issue, too, should be raised at the removal or review hearing. *Id.* Even so, Margaret has failed to demonstrate the appointment of a case manager would have made a difference in her progress in complying with the case plan.

The juvenile court concluded the State had established by clear and convincing evidence that the child, Sheehan, cannot be returned to or placed in the custody of the child's mother, Margaret, without the risk of abuse or neglect. Termination of parental rights is appropriate when the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. *In*

Interest of J.W.D., 456 N.W.2d 214, 218 (Iowa 1990). The juvenile court was specifically concerned with the harm set forth in Iowa Code section 232.116(1)(g).

Margaret underestimates the depth and duration of her problems. The juvenile court stated there has been a dramatic improvement from her commitment to her other children since the termination hearing, but Margaret still has difficulty attending to Sheehan's needs. She remains inattentive and fails to recognize or respond to him physically and emotionally. Her living arrangements have only minimally improved since her parental rights of the other children were terminated. She still has difficulty participating for any length of time in a treatment program for her mental health problems. The juvenile court determined any amount of services was not likely to improve Margaret's ability to parent although it was impressed with the efforts offered by DHS. We agree.

AFFIRMED.