IN THE COURT OF APPEALS OF IOWA

No. 1999-174 (9-391) / 99-0149
Filed July 23, 1999

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CLERK SUPREME COURT

IN THE INTEREST OF J.F. and Z.A, Minor Children,

M.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her two children.

AFFIRMED.

Lori Holm and Christopher A. Kragnes, Sr., of the Law Offices of Christopher A. Kragnes, Sr., P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee-State.

Kimberly Ayotte, Des Moines, guardian ad litem for minor children.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

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VOGEL, J.

Overview: Michelle appeals the termination of her parental rights to her two children, John, born in 1990, and Zachary, born in 1992. She claims (1) she was denied due process as a result of numerous continuances during the case and (2) reasonable efforts were not made to avoid the continued removal of the two children from her home. Michelle gave birth to another child during the pendency of this case but her rights to that child are not at issue. The parental rights of the fathers of the children also were terminated but are not at issue in this appeal. We affirm the juvenile court.

CINA proceedings: John and Zachary were removed from Michelle's care on September 6, 1996 and on the same day, the State filed a petition alleging them to be children in need of assistance. Zachary had tested positive for cocaine and Michelle admitted selling drugs and leaving the children alone. They were also exposed to violence in her home. The adjudicatory hearing set for November 1996 was continued to December and then to January 1997 after Michelle was in a car accident. In January 1997 the court adjudicated John CINA under Iowa Code section 232.2(6)(n), and Zachary under sections 232.2(6)(n) and (o) (1997). The adjudication order provided for supervised visits after an apology session and at the therapist's discretion. Michelle did not complete the apology until January 1998.

Michelle left Iowa after the adjudication, knowing Iowa could not provide services if she left and reunification with her children would be more difficult. She

participated in a substance abuse evaluation while in Missouri, but did not follow through with the recommendations. After her return to Iowa in April 1997, Michelle did not provide UA's as recommended or required. When she did, she tested positive. Throughout the pendency of the CINA case, Michelle denied using drugs, claiming she only manufactured and sold them.

The children's foster placement was continued at the dispositional hearing in April 1997. The July 1997 review hearing began but, at Michelle's request was continued to September, then to October, then to November, then to December, then to an unspecified date. The first continuance was at Michelle's request, the others were made on the court's own motion, not requested by either party. Michelle did not have visitation with John and Zachary after October 1996 until the court terminated her parental rights in November 1998.

Termination proceedings: On January 26, 1998, the State filed a petition to terminate Michelle's parental rights under Iowa Code sections 232.116(1)(b), (1)(c), (1)(d), (1)(e), and (1)(k). The termination hearing was held on May 18, 1998, continued to July 23, 1998, and submitted to the court on August 10, 1998. Several months later, on November 19, 1998, the court issued its decision terminating Michelle's parental rights. The court concluded "all the allegations of the petition except 232.116(1)(k) have been proven by clear and convincing evidence."

Appellate claim: On appeal, Michelle claims she was denied due process because of the numerous continuances during the case and that reasonable efforts were not made to avoid the continued removal of John and Zachary from her home.

Scope of review: We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). It is well established that "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599, 606 (1982). For that reason, "state intervention to terminate the relationship between [a parent] and [a] child must be accomplished by procedures meeting the requisites of the Due Process Clause." *Id.*, 102 S.Ct. at 1394, 71 L.Ed.2d at 606 (quoting *Lassiter v. Department of Social Serv.*, 452 U.S. 18, 37, 101 S.Ct. 2153, 2165, 68 L.Ed.2d 640, 656 (1981) (Blackmun, J., dissenting)).

Michelle does not state how the issue concerning multiple continuances was preserved for review on appeal. *See* Iowa R. App. P. 14(a)(5). It does not appear in the record she raised this issue in the juvenile court proceedings. We do not review issues for the first time on appeal, even constitutional issues. *In re V.M.K.*, 460 N.W.2d 191, 193 (Iowa App. 1990).

Michelle does not state how the issue of reasonable efforts was preserved for review on appeal. *See* Iowa R. App. P. 14(a)(5). Challenges to the services offered should come when the case plan is entered, not at the termination hearing. Michelle

did not challenge the adjudicatory or dispositional orders. She did request visitation *after* the termination petition was filed, but had not put herself in a position to have visitation. While the State has the obligation to make reasonable efforts, the parents have a responsibility to demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges to the plan for reunification should have come when the plan was entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Michelle did not provide a letter of apology until January 1998. The termination order lists nine services provided to the family to promote reunification. Michelle consistently failed to follow through with services offered. The lack of visitation is based on her own actions and choices. This issue should have been raised earlier and we will not consider it now. *In re C.D.*, 508 N.W.2d at 101.

For the reasons set forth above, we affirm the juvenile court's order terminating Michelle's parental rights to John and Zachary.

AFFIRMED.