IN THE COURT OF APPEALS OF IOWA

No. 6-281 / 95-1848

IN THE INTEREST OF C.K., A Minor Child,

J.K., Mother,
Appellant,

D.K., Father,
Appellant.

FILED
AUG 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clayton County, Allen D. Allbee, Associate Juvenile Judge.

Mother and father appeal from an order terminating their parental rights. **REVERSED AND REMANDED.**

Gary L. Mick, Guttenberg, for appellant mother.

Jeffrey E. Clements, West Union, for appellant father.

Thomas J. Miller, Attorney General, Maureen McGuire, Assistant Attorney General, and Stephen D. Saunders, Assistant County Attorney, for appellee State.

Eugene F. Kramer, Monona, for appellee minor child.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

SACKETT, C.J.

Jenifer and David, the parents of Christopher, born on November 23, 1993, appeal from an October 4, 1995, order terminating their parental rights under Iowa Code section 232.116(1)(g). Jenifer alleges reasonable efforts have not been made to allow her to retain custody of Christopher. She advances although she does not currently have a home for Christopher, she has stabilized her life and in six months she will be in a position to assume Christopher's custody. David concurs with Jenifer's arguments and asks that Christopher be placed in the custody of his brother, a licensed foster parent. We reverse and remand.

David and Jenifer were married. Neither had juvenile or criminal records. Jenifer has had a difficult childhood. She spent a portion of her childhood in foster care and at Hillcrest in Dubuque in an independent living center for the young. David has a mental impairment. David and Jenifer were living together with Christopher when a number of complaints were registered about the condition in which they kept their home. Their housekeeping was extremely poor. Jenifer and David were given the services of a homemaker. The services were terminated when Jenifer and David were not up by eight o'clock in the morning when the homemaker arrived. Subsequently, Jenifer and David agreed Christopher would stay with David's mother, but he was returned to their care without the approval of the Department of Human Services. Again, homemaker services were implemented, but Jenifer and David were frequently not home when the homemaker arrived. Ultimately, based on general

concerns for Christopher's safety, he was removed by an ex parte order from his parents' care in September 1994 and placed in foster care. When placed in foster care, Christopher was well nourished and healthy. Jenifer and David love Christopher very much.

Evaluations of both parents at about this time disclosed Jenifer has the knowledge and correct attitude to be a good mother to Christopher. The evaluation further revealed she has problems from earlier verbal, physical, and sexual abuse that sometimes get in the way of her care for Christopher. The evaluation found David has significant mental impairment and emotional problems that could cause him to present a danger to Christopher.

Services were provided. David was to be helped by a child development specialist. Jenifer was enrolled in psychotherapy.

In October 1994, Christopher was found to be a child in need of assistance and his foster care placement was continued. David and Jenifer were given supervised visitation with Christopher and provided with information on how to be certain their home was safe for Christopher. By November 1994, it appeared David and Jenifer would separate.

In March 1995, the State filed its petition to terminate parental rights. In May of that year, an order was filed finding David and Jenifer had separated and neither parent had made sufficient progress to allow Christopher to come home. Jenifer was planning to enter the Job Corps at that time. In May 1995, Jenifer did enter the Job

Corps where she made reasonable progress, but during the course of that time she did not see Christopher. This was not because she did not want to do so. She wanted to see him but had no money for transportation. The department did not have funding to provide the necessary transportation. In the Job Corps, Jenifer received a series of instruction, including some on caring for her child and awareness of problems of parenthood. Jenifer took to instruction well. She had difficulty keeping her quarters clean, but with help modified and improved her ability to keep it clean.

In September 1995, a review order was filed. Jenifer asked that the termination of parental rights hearing be continued. It was not, and on October 4, 1995, the court terminated Jenifer's and David's parental rights relying on Iowa Code section 232.116(1). This section provides:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds.
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> . . . .
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> g. The court finds that all of the following have occurred:
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> (1) The child is three years of age or younger.
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> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
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> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

This appeal followed. Our review of a termination proceeding is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984), *cert. denied sub nom., J.G. v. Tauke*, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the finding of the juvenile court, especially when considering the credibility of witnesses. *Id.*

Jenifer contends her parental rights should not be terminated because she has corrected the deficiency that led to Christopher's removal. She contends the removal was based on potential harmful effects from a lack of a reasonable degree of care in supervising Christopher, primarily focusing on the physical surroundings of her home. She contends her separation from David and service in the Job Corps show she has the ability to supervise Christopher in a safe environment.

It is not the position of the State to set acceptable standards for housekeeping. *See In re N.M.W.*, 461 N.W.2d.2d 478, 481 (Iowa App. 1990). The question is whether Jenifer has the ability to provide an environment where Christopher is reasonably safe given her ability to supervise him.

The issue focuses on both Jenifer's ability to keep house and her ability to follow through on assigned tasks. The juvenile court found Jenifer had good parenting skills and could be a very adequate mother. Jenifer has the ability to keep her home so that it is a secure place for Christopher, although she has not always been consistent in doing so.

Jenifer is not trusting. She is suspicious of the Department of Human Services. She suffers from periods when she puts her own concerns ahead of Christopher.

Jenifer spent a portion of her childhood in foster homes and institutions. The problems she suffers are typical of those suffered by persons who live in different situations during childhood and do not have the security and bonding of a family.

Jenifer rejected counseling offered by the Department of Human Services because she did not trust the provider. As the juvenile court found Jenifer has extreme distrust of the department, it is difficult for her to cooperate with them. Jenifer currently lives with a man other than Christopher's father in a place to which she has not provided the Department of Human Services access.

It appears Jenifer's lack of confidence and trust in the department is one of the most serious underlying problems in this case. The lack of trust in the department seems to have contributed to her refusal to allow them to come into her home.

The unfortunate thing about our current system is that the same people who are charged with assisting families and offering services so families can be reunited are also charged with gathering evidence to support a termination action should one be filed. This makes it difficult for a parent subject to charges of improper parenting to trust service workers. It also makes it difficult for the service workers to gain the parents' trust.

We cannot on this record determine whether Jenifer has a basis for her lack of trust. Jenifer is a mother who truly loves her child; she has tried and is continuing to try to improve her life. Christopher was healthy and well-fed while in her care. She has great difficulties in keeping a clean house and is not consistent in her parenting

skills. Many parents are not consistent in parenting skills. Many children who live in dirty houses become successful adults. Jenifer also is of a lower social economic class and was herself raised in part in our social service system.

The State has failed to show by clear and convincing evidence that Christopher cannot be returned to his mother's care if she has assistance in finding adequate housing. The juvenile court recognizes Jenifer has taken steps to regain Christopher. The juvenile court, however, finds those steps should have been taken a year earlier.

Jenifer next contends the Department of Human Services failed to provide reasonable services to allow her and Christopher to be reunited. There is a conflict around the counseling Jenifer was to receive.

David, too, alleges he was not provided reasonable services. He contends the court ordered that the Department of Human Services provide training for him with a professional facilitator able to provide services for mentally challenged people and to provide modeling. He contends the department utilized the services of a person who only had an associate degree in human services and had no special training or education in the issues of mentally challenged people, and he was not given the training model the court ordered. He also contends this person did not recall reviewing the assessment of Dr. Harper, who had made the recommendations upon which the court based its order for services.

The State points out this is the first time David and Jenifer lodged challenges to the services offered.

There is a requirement that reasonable services be offered to preserve the family unit. *See In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *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). A court is required to find reasonable efforts have been made to eliminate the need for removal before a removal is ordered. *See* Iowa Code § 232.102(4); *see also* 42 U.S.C. § 671(a)(15). Clearly in the State's view the services it offered failed because it is asking for termination. There is no evidence Jenifer and David asked for or challenged the services offered as they do here. There is no prior challenge reasonable efforts had not been utilized or that any request for specific services to allow the family to remain together had been made. While the State had the obligation to make the efforts,[1] 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

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[1] The core of the reasonable efforts mandate is that a child welfare agency must make reasonable efforts to prevent placement or to reunify families in each case. This is both a required element of each state's Title IV-E state plan and a condition of federal funding for individual foster care placements. 42 U.S.C §§ 671(a)(15), 672(a)(2); *see* Attorneys' and Judges' Responsibilities. Because federal law contains no elaborate definition of "reasonable efforts," the states have considerable discretion in meeting the requirement in individual cases. Federal law does make clear, however, that the case plan for each child is an integral element of the reasonable efforts implementation process. The federal regulations implementing the reasonable efforts requirement mandate that each child's case plan must contain a description of what services were offered and provided to prevent removal of the child from the home and to reunify the family. 45 C.F.R. § 1356.21(d)(4) (1990). In addition, federal law clearly requires that states provide a system of fair hearings to enable families whose request for services have been denied or not acted upon to seek review of the denial. 42 U.S.C. § 671(a)(12); Edna McConnell, Reasonable Efforts: Steps for Keeping Families Together 47, 71.

reunification should have come when the plan was entered. There is no evidence David and Jenifer attempted to raise these issues earlier so they will not be addressed at this time. *See id.*

There still remains the issue of what future services should be advanced to further Christopher's interest. David does not contend Christopher should be placed in his care. He contends Christopher should be placed in the care of his brother, a licensed foster parent. He also supports Jenifer's request for ultimate custody.

The State argues Christopher should not be placed in foster care with David's brother because it is not in Christopher's interest. The State advances also the court should consider that David's brother is not certain he would adopt Christopher.

Yet, Christopher is now in his third foster home. His current foster parents are considering adoption, but have not agreed to it. There was no evidence presented to the juvenile court as to his potential for adoption.

In the home of David's brother, Christopher will retain ties with his family. If these ties are severed, will he remain a child going from foster home to foster home? Christopher has an uncle and his wife anxious to accept Christopher as a foster child, and he has a biological mother with adequate parenting skills who the juvenile court recognizes has made steps to regain Christopher's custody, although the juvenile court feels she should have made those steps earlier.

We recognize delay is not good in parental terminations. If there were assurance Christopher would immediately be adopted, there would be reason to rush

to termination. There is not. A family member who is a licensed foster parent requests custody.

Jenifer has not requested services to help her obtain housing that should be afforded her.

Christopher should be placed with David's brother and wife as foster parents. This appears to be his best chance for permanency.

REVERSED AND REMANDED.

Habhab, J., specially concurs; Streit, J., dissents.

HABHAB, J. (specially concurring)

I specially concur in the result only.

STREIT, J. (dissenting)

I dissent without opinion.