IN THE COURT OF APPEALS OF IOWA

No. 1999-70 (9-227) / 98-1711
Filed April 30, 1999

IN THE INTEREST OF K.J. and K.J.,
Minor Children,

C.J.D., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karen Romano, District Associate Judge.

A mother appeals the order terminating her parental rights. **AFFIRMED.**

Jeffrey M. Lipman of the Lipman Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Jon E. Anderson, Assistant County Attorney, for appellee.

Michael J. Burdette of McEnroe, McCarthy & Gotsdiner, West Des Moines, guardian ad litem for minor children.

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

VOGEL, J.

Overview. Charlene, the mother of Kevin and Kallie, appeals a juvenile court order terminating her parental rights. She contends reasonable efforts were not made to reunify her with her children because visitation was cut from weekly to biweekly even though visits were going well. We affirm.

Background. Kevin and Kallie are the children of Charlene and Kenny D. The children were removed from Charlene's custody in April 1997. In June 1997, Kevin and Kallie were adjudicated in need of assistance under Iowa Code sections 232.2(6)(c)(2), (g), (n) because Charlene was homeless and had mental health and substance abuse problems.

Charlene was admitted to Broadlawns hospital in June and remained there until her involuntary commitment to Mt. Pleasant for inpatient substance abuse treatment. After her release in early August she had one supervised visit with the children. Visitation was suspended when Charlene tested positive for drugs on August 11. She attended a staffing on September 17 at which time she declared she would not go to substance abuse after care or do any of the things being required of her to get her children back.

The case permanency plan updated in August and October 1997 recommended Charlene (1) complete the intensive outpatient treatment program at Gateway and follow all recommendations; (2) follow the recommendations of the psycho/social evaluation, including assertiveness training and individual therapy; (3) maintain

employment and housing; and (4) submit to drug screens twice weekly and remain clean from illegal substances. It provided supervised visitation was at the Department's discretion once the drug screens were clean and as long as they remain clean.

At a dispositional hearing on October 10, the guardian ad litem requested that visitation not resume until Charlene was successfully participating in after care and had tested negative for drugs twice in succession. Charlene began after care on October 28. She tested positive for drugs nine of the next twelve tests between October 16 and December 11, 1997. She provided no more drug screens after that date. Charlene was unsuccessfully discharged from after care on January 7, 1998, for non-compliance. Visitation was not terminated at that time, however, because the guardian ad litem and the children's therapist were concerned what impact that would have on the children.

On January 30, 1998, Charlene's Children and Families of Iowa (CFI) worker telephoned her to report the visits were going fine. However, Charlene was not complying with the case permanency plan recommendations. She was not participating in outpatient treatment. She no longer submitted to drug screens. She lost her job and listed her father's home as her residence. Charlene did not follow through with the recommendations of the psychosocial evaluation. At the staffing on February 13 the children's therapist requested visitation be decreased to bi-weekly in view of how the case was going and so the children could gradually be seeing less and

less of Charlene. Charlene was very angry during the staffing, fired her attorney, and left the meeting after blaming everyone there for her problems. Charlene did not attend the May staffing.

Termination proceeding. The children's guardian ad litem filed a petition to terminate Charlene and Kenny's parental rights in May 1998. At the hearing, Charlene's new attorney orally requested a continuance. The court denied the motion, finding Charlene had notice of the hearing and knew of its importance. Charlene did not attend the termination hearing and did not present any evidence or raise any claims before the court.

The court found Charlene continued to test positive for drugs and eventually discontinued submitting to drug testing. The court noted Charlene's visits with the children were reduced because of her non-compliance with the case permanency plan. The court found Kenny had abandoned the children. Finding the children could not be returned to either parent, the court terminated Charlene and Kenny's parental rights under Iowa Code sections 232.116(1)(e) and Kenny's also under sections 232.116(1)(c), and (1)(d). Kenny has not appealed and his parental rights are not at issue.

Appellate claims. Charlene asserts she was told in February 1998 her visitation with the children was "going fine;" yet, the department reduced the frequency of visitations "so that the children could gradually be seeing less and less" of her. She alleges the department did not make reasonable efforts to reunify the

family. She does not challenge the court's findings or conclusions supporting termination under Iowa Code section 232.116(1)(e).

The State answers Charlene failed to preserve this issue for appellate review because she failed to demand increased visitation or otherwise raise this issue before the trial court.

Scope of review. We review terminations of parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Reasonable efforts to reunite parent and child are required prior to terminating parental rights. *In Interest of T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). *See generally* Iowa Code § 232.102. Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code § 232.102(9)(a). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the children from the harm responsible for the removal. *Id.* Visitation between a parent and child is an important ingredient to the goal of reunification. *See In Interest of S.W.*, 469 N.W.2d 278, 280-81 (Iowa App. 1991). However, the nature and extent of visitation is always controlled by the best interests of the child. *See In re Augustus*, 158 N.W.2d 625, 629 (Iowa 1968). This standard may warrant limited parental visitation. *See In Interest of C.G.*, 444 N.W.2d 518, 520 (Iowa App. 1989).

The department provided services designed to treat Charlene's substance abuse so she could resume care of her children. Visitation was continued without diminution for weeks after Charlene's final refusal to provide drug screens or complete after care. Although visitation itself was going well, Charlene's progress toward possible reunification was not. She did not comply with or successfully complete the services offered by the department. She did not submit to drug screens or demonstrate her abstinence from illegal substances. Charlene did not maintain employment and a residence. She did not follow through with the recommendations of the psychosocial evaluation done in June 1997. Charlene's own noncompliance resulted in restrictions on visitation. She cannot now claim the efforts made were not reasonable.

Preserving families is the underlying principle behind these proceedings. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). A parent's challenge to services should be made when they are offered. *In re H.H.*, 528 N.W.2d 675, 678 (Iowa App. 1995). Termination proceedings should not be voided on such a basis. Suggestions are due far earlier in the process. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993).

Charlene argues she had no opportunity to object until after the report for termination of parental rights was prepared on June 23, 1998. Charlene had the opportunity to object as early as the February 13 staffing. She chose instead to discharge her attorney and blame everyone else for her problems. Charlene also could have objected at any time between the staffing and the termination hearing, but did

not. She chose not to appear or present any defense at the termination hearing. Charlene did not preserve this issue for our review. Even if she had preserved this issue we would affirm. The record contains ample evidence Charlene did not comply with the case permanency plan and the children cannot be returned to her care.

Both Kevin and Kallie have been placed with their aunt and uncle who completed a home study, have become licensed for foster care, and plan to adopt them if parental rights are terminated.

AFFIRMED.

No. 98-1711. [1999-70 (9-227)] IN RE K.J.

Appeal from the Iowa District Court for Polk County, Karen Romano, District Associate Judge. **AFFIRMED.** Considered by Huitink, P.J., and Vogel and Mahan, JJ. Opinion by Vogel, J. (7 pages $2.80)

Kevin and Kallie are the children of Charlene and Kenny D. In June 1997, Kevin and Kallie were adjudicated in need of assistance under Iowa Code sections 232.2(6)(c)(2), (g), (n) because Charlene was homeless and had mental health and substance abuse problems. The case permanency plan updated in August and October 1997 recommended Charlene (1) complete the intensive outpatient treatment program at Gateway and follow all recommendations; (2) follow the recommendations of the psycho/social evaluation, including assertiveness training and individual therapy; (3) maintain employment and housing; and (4) submit to drug screens twice weekly and remain clean from illegal substances. Charlene tested positive for drugs nine of the next twelve tests between October 16 and December 11, 1997. She provided no more drug screens after that date. Charlene was unsuccessfully discharged from after care on January 7, 1998, for non-compliance. On January 30, 1998, Charlene's Children and Families of Iowa (CFI) worker telephoned her to report the visits were going fine. However, Charlene was not complying with the case permanency plan recommendations. She was not participating in outpatient treatment. She no longer submitted to drug screens. She lost her job and listed her father's home as her residence. Charlene did not follow through with the recommendations of the psychosocial evaluation. **OPINION HOLDS:** The department provided services designed to treat Charlene's substance abuse so she could resume care of her children. Although visitation itself was going well, Charlene's progress toward possible reunification was not. Charlene's own noncompliance resulted in restrictions on visitation. She cannot now claim the efforts made were not reasonable.