IN THE COURT OF APPEALS OF IOWA

No. 0-686 / 00-1122
Filed February 28, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF J.M., R.G., and T.L., Minor Children,

J.G., Mother,
Appellant.

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

The mother of three minor children appeals a district court order terminating her parental rights. Mother argues: (1) she was denied numerous points of due process; (2) the Department of Human Services failed to use reasonable efforts to promote reunification; and (3) the State failed to prove by clear and convincing evidence that termination of her parental rights pursuant to Iowa Code sections 232.116(1)(c) and 232.116(1)(d) (1999) was in the children's best interest. **AFFIRMED.**

Cheryl J. Newport and Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, Rob Cusack, County Attorney, and Gerda C. Lane, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Jennifer appeals the juvenile court order terminating her parental rights to her three minor children. She argues on appeal: (1) she was denied due process rights on numerous grounds; (2) the Department of Human Services failed to use reasonable efforts to reunify her with her children; (3) the State failed to prove by clear and convincing evidence the grounds for termination under Iowa Code sections 232.116(1)(c) and 232.116(1)(d) (1999); and (4) it was not in the best interest of the children to terminate her parent-child relationship with them. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS

Jennifer is the mother of three minor children, Julia, born February 12, 1992, Ronson, born March 9, 1994, and Taylor, born October 17, 1997. Prior to Jennifer's involvement with the Iowa Department of Human Services ("DHS") in 1998, she had previously been the subject of abuse reports in at least two other states since 1996. It appears she was offered services in those states but moved from them in order to avoid such services.

In July of 1998 the DHS became actively involved in providing services to Jennifer and her children after two founded abuse reports against Jennifer in March and May of 1998. Family Resources, Inc. ("FR") also became involved with the family in August of 1998. Between July and September of 1998 two more founded reports of abuse were filed against Jennifer. In addition, the children were continually found by service providers to be unsupervised, dirty, ill-fed, and improperly clothed. The children were ultimately adjudicated children in need of assistance in November of 1998.

Although it appears from the record that Jennifer initially made some progress in parenting and home cleanliness, by mid-December of 1998 she was uncooperative with case plan recommendations and there were several case plan recommendations she had not met, including setting up a substance abuse evaluation and a home visit by the appointed guardian ad litem ("GAL"). Although she indicated an intent to meet case plan recommendations, she was always going to make or improve her efforts at some future time. A dispositional hearing was held on January 6, 1999. The court ordered Jennifer and her boyfriend to cooperate with services, continue with parenting classes, and attend a batterer's education program. The court also ordered that the parents not remove the children from the jurisdiction of the State of Iowa without prior approval of the court. As of January of 1999 the FR worker reported that Jennifer had made only minimal progress, the children still had very poor hygiene, and they were often improperly dressed.

On January 22, 1999 Jennifer informed the DHS that she was moving back to Indiana to be with her family. The children were then taken into DHS custody and placed in foster homes. This placement was upheld on January 25, 1999 by the court at a shelter hearing. All three children remained in foster homes from that point until termination.

Between January and March of 1999 Jennifer moved at least seven times and kept only sporadic contact with her children. By mid-March the children were displaying intense reactions to visitations with Jennifer and were displaying behavioral problems associated with each of the supervised visits. They acted out prior to, during, and after each visit. Based on these behavioral problems the

visitation worker recommended temporarily shortening or suspending the visitations. Visitation was reduced to one hour per week by court order. Thereafter Jennifer missed many appointments with service providers and was late to most of the others. She continued to refuse to comply with requests for a substance abuse evaluation and a urine specimen, of particular concern based on her past history of problems with substance abuse.

In August 1999 Jennifer reported by telephone to FR that she was living in Indiana with her mother, despite advice from service providers that such a move would hurt her chances of having her children returned to her care. She also stated at that time that she was pregnant, and that she wanted to have weekly telephone calls with her children while she was in Indiana. Jennifer gave birth to Devon in mid-August while in Indiana. According to the record Devon was fifteen weeks premature and weighed only about three pounds. The Indiana DHS reported to the Iowa DHS that it believed Jennifer presented for delivery of Devon with track marks on her arms from drug usage. The FR worker testified that it was also around this time Jennifer informed her that the reason she left Iowa was so that DHS would not take her newborn away when she delivered. It was after this series of events that the FR worker recommended termination of Jennifer's parental rights in a report dated August 22, 1999.

Jennifer had requested the DHS transfer the juvenile cases to Indiana's jurisdiction, claiming she was now sober and had relatives there with whom the children could be placed. However, when DHS and FR requested that she provide a substance abuse evaluation and clean urine specimen she did not comply with the request. Furthermore, Jennifer could not provide DHS with the

names of any possible relative placements in Indiana. At an October 1999 review hearing the court ordered Jennifer to share her Iowa case permanency plan with her Indiana caseworker.

On February 22, 2000 the GAL field a motion to suspend contact between Jennifer and the children due to the fact Jennifer only made sporadic, infrequent contacts with the children and even these few visits caused the children emotional turmoil and other disciplinary problems. As of March 2000, Jennifer had not informed the DHS of any services she was then receiving in Indiana and had not shown that she had in fact shared her Iowa case permanency plan with Indiana service providers.

On March 2, 2000 Jennifer came to Davenport for a pre-hearing meeting and requested visitation at that time. The court found that a face-to-face visit at that time would not be in the children's best interest but did allow for a phone visitation. A call was set up by a DHS worker for that day, however Jennifer never returned the workers phone call and thus the visit did not take place. On March 10, 2000 Jennifer filed a motion seeking a transfer of the CINA cases to Indiana. In the same motion she requested that services be provided to her in Indiana. She also sought amendment or modification of the juvenile court's decision to suspend visitation.

The juvenile court, in a ruling filed March 17, 2000, determined it was not in the children's best interest for the case to be transferred to Indiana, that further services at that point would be inappropriate, and that visitation at that point did not promote reunification. The court therefore granted the GAL's motion to suspend any further visitation at that point.

In April of 2000 a woman who identified herself only as "Connie" from Indiana called the Iowa DHS requesting that Taylor be placed with her and if necessary she might take Julia and Ronson as well. When Jennifer was asked about this request she indicated she was not interested in Connie being considered as a placement option. As of May 2000 the Iowa DHS still had not received any information indicating Jennifer was receiving services in Indiana to promote reunification. Jennifer had not complied with requests for a urine specimen. She had not completed substance abuse evaluation. The children's foster parents had expressed interest in adopting the children.

A termination hearing was held on June 1, 2000 and Jennifer's rights were terminated by the juvenile court on June 7, 2000 pursuant to Iowa Code sections 232.116(1)(c) and 232.116(1)(d). Jennifer had filed a combined motion to exclude evidence/objection to admission of evidence. The court overruled portions of it and reserved ruling on other parts. Following the termination hearing and ruling, Jennifer also filed a rule 179(b) motion, alleging she had not been provided notice of all grounds upon which termination had been ordered. The juvenile court denied the rule 179(b) motion, noting that there was a typographical error in the petition for termination but it did not amount to unfair notice to Jennifer as she presented a defense consistent with the proper Code provisions.

Additional facts will be set forth in discussion of the issues to which they relate.

Jennifer appeals the termination of her parental rights alleging she was denied due process on several grounds, the DHS failed to use reasonable efforts

to promote reunification, the State failed to prove by clear and convincing evidence the grounds for termination of her parental rights under Iowa Code sections 232.116(1)(c) and 232.116(1)(d), and that it was not in the children's best interest to terminate her parental rights.

II. STANDARD OF REVIEW

We review termination proceedings de novo. Iowa R. App. P. 4; *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* The grounds for termination must be proven by the State by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

III. ERROR PRESERVATION PRINCIPLES

Certain principles of error preservation apply to many of the issues asserted on appeal. A preliminary summary of those principles will avoid the necessity of repeating them from time to time hereafter.

We do not address issues, even of constitutional magnitude, not presented to the trial court. *Eastabrook v. Iowa Civil Comm'n*, 283 N.W.2d 306, 311 (Iowa 1979). Trial objections based on rules of evidence are too broad to preserve constitutional issues for appeal. *See, e.g., State v. Farni*, 325 N.W.2d 107, 109 (Iowa 1982) (holding that a trial objection that a question calls for hearsay is too broad to raise the issue of constitutional right of confrontation);

State v. Shortridge, 589 N.W.2d 76, 82 (Iowa Ct. App. 1998) (holding that constitutional objections to testimony, raised on appeal, were waived when the objection at trial was "hearsay" and the constitutional objections were not raised at trial). A specific objection at trial, if overruled, cannot avail the objector except as to the ground specified. *Porter v. Iowa Power & Light Co.*, 217 N.W.2d 221, 231 (Iowa 1974). In view of the range of interests protected by our error preservation rules, we will consider on appeal whether error was preserved despite the opposing party's omission in not raising the issue. *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000). Accordingly, the absence of an assertion by the State that Jennifer has failed to preserve error on an issues does not preclude us from determining whether error has been properly preserved. *See id.* (stating that the defendant's failure to object to the trial court's consideration of an issue in its ruling on a post-trial motion does not preclude the appellate court from determining whether error has been properly preserved).

IV. DUE PROCESS CLAIMS

Jennifer claims she "was denied due process" by the juvenile court's

a) Denial of mother's motion to exclude evidence;
b) Denial of mother's motion to exclude witnesses not duly noticed pursuant to discovery requests;
c) Failure to hold a permanency hearing
d) Overruling mother's objection to witness testifying without proper foundation;
e) Failure to appoint separate counsel for the children; and
f) Denial of mother's motion to sequester witnesses.

Issues (a), (b), (d), and (f) involve juvenile court decisions that Jennifer could have and did complain about in the juvenile court. Issues (c) and (e) involve complaints that Jennifer could have raised in the juvenile court but did not.

However, at no time in the juvenile court did Jennifer raise the issues that she how raises on appeal, a claim that she was "denied due process" in connection with any one or more of these six matters. Under the authorities cited above, Jennifer waived her present "due process" claims. We therefore reject these claims on error preservation grounds. However, because the underlying claims of error are also in very large part without merit for additional reasons, we will discuss those additional reasons.

A. MOTION TO EXCLUDE EVIDENCE

In response to discovery requests the GAL identified in detail fifty-four documents he intended to offer at the termination hearing, and by way of addendum identified in detail seven more, a total of sixty-one exhibits. Jennifer objected to exhibits one through sixty in part on the ground they contained hearsay. Our standard of review concerning admission of hearsay evidence is for correction of errors at law. *State v. Tornquist*, 600 N.W.2d 301, 303 (Iowa 1999). The issue of whether hearsay evidence is admissible in a termination of parental rights hearing has on several occasions over a period of years been resolved against Jennifer's position. *See, e.g., In re E.J.R.*, 400 N.W.2d 531, 532-33 (Iowa 1987) (holding hearsay evidence is admissible in a termination of parental rights hearing). We reject Jennifer's claim that the admission of any hearsay evidence violated her rights to due process of law.

Jennifer filed a combined motion to exclude evidence/objection to admissibility of evidence. In addition to objecting that the documents contained hearsay, her motion objected to exhibits one through sixty on the additional ground they lacked foundation "as the authors had not been listed as witnesses

or being called as witnesses." Without identifying what proposed exhibit or exhibits such objections were directed at, Jennifer also objected

> to the Court's consideration of any evidence previously entered in the adjudicatory hearing unless proper foundation can be laid for admitting such evidence in the termination proceeding unless Mother is afforded the opportunity to cross-examine the authors of any written evidence, it is otherwise admissible under the rules of evidence, and Mother has been given reasonable notice of its use.

The motion and objections were addressed at the beginning of the termination hearing, the juvenile court overruled the motion and objections, and the court admitted the sixty-one exhibits. Ordinarily, we review a trial court's decision to admit evidence for an abuse of discretion. *State v. Rains*, 574 N.W.2d 904, 913 (Iowa 1998).

On appeal Jennifer now acknowledges that exhibits one through thirteen, sixteen through eighteen, twenty-one, twenty-seven and twenty-eight, forty, and fifty-four were properly admitted either because they are "procedural historical documents" (pleadings, motions, orders, etc.) from the CINA proceedings or were admitted in the underlying CINA proceedings. We note that exhibit twenty-three was admitted at the same CINA hearing as exhibits twelve, forty and fifty-four, and thus was also properly admitted at the termination hearing. Further, exhibits nineteen, twenty-two, and thirty-one through thirty-five were admitted at an April 1, 1999 CINA modification of disposition hearing, and thus were also properly admitted at the termination hearing.

Exhibits fourteen and fifteen are reports by the GAL, filed with the court and sent to all interested persons, concerning his acts on behalf of the children. Jennifer made no objection to these reports in the CINA proceedings. In response to discovery requests the GAL had identified these two exhibits (as well

as the other fifty-nine exhibits) as documents he would offer at the termination hearing. Jennifer and her attorney were thus well aware substantially before the termination hearing of the reports, their content, and the GAL's intent to offer them. The GAL was present throughout the termination hearing and subject to being called as a witness by Jennifer and examined concerning the reports if she wished to do so. There was no surprise or unfair prejudice to her, and the juvenile court did not abuse its discretion in admitting the two exhibits.

Exhibits twenty, twenty-four and fifty-nine are DHS Case Permanency Plans in the CINA proceedings. They are three of six such plans which were admitted in evidence. Exhibit twenty is chronologically the first of the six, and exhibits twenty-four and fifty-nine are the last two. Each plan other than exhibit twenty, the first, repeats a large amount of information that was contained in previous plans. Jennifer clearly was aware of the contents of the three plans, and was aware they would be offered in evidence at the termination hearing. An author of each was identified through discovery as a witness to be called at the termination hearing, attended the hearing, was called as a witness, and was subject to being examined by Jennifer concerning the reports if she wished to do so. Jennifer's cross-examination of an author of the plans in fact encompassed many matters covered by them. The admission of these exhibits caused no surprise or unfair prejudice to Jennifer, and the juvenile court did not abuse its discretion in admitting the three exhibits.

Exhibits twenty-nine, thirty-six through thirty-eight, and forty-one through fifty-one are written reports by FR, the contract services provider for the DHS. They cover services provided, progress, and problems concerning the children.

Most are quarterly (ninety-day) reports. Numerous other FR reports were admitted in the underlying CINA proceedings. Jennifer clearly was aware of the contents of these fifteen reports and was aware they would be offered in evidence at the termination hearing. An author of one-half of them was identified through discovery as a witness to be called at the termination, attended the hearing, was called as a witness, and was subject to being examined by Jennifer concerning those reports if Jennifer wished. Jennifer's cross-examination of the author in fact encompassed many matters covered by the reports. An author of the other one-half, although not identified as a witness in fact attended the termination hearing, was ultimately called as a witness, and was subject to being examined by Jennifer concerning the reports if Jennifer wished. The admission of these exhibits caused no surprise or unfair prejudice to Jennifer, and the juvenile court did not abuse its discretion in admitting the fifteen exhibits.

Exhibits fifty-two and fifty-three are reports to FR by a clinical social worker employed by Psychology Associates, Ltd. Jennifer was aware of the content of the reports and aware the reports would be offered in evidence. The author was identified as a witness, attended the termination hearing, was called as a witness, and was subject to examination by Jennifer concerning the reports. On appeal Jennifer acknowledges that proper foundation was presented for these exhibits. The admission of these two exhibits caused no unfair prejudice to Jennifer, and the juvenile court did not abuse its discretion in admitting them.

Exhibits fifty-six, fifty-seven and fifty-eight are FR quarterly reports, one concerning each of the three children, in the CINA proceedings. Exhibit sixty is a "Termination Report" by FR concerning all three children. Jennifer was aware of

the contents of the reports and aware they would be offered in evidence. One of the two authors of each report was identified as a witness. Both of the authors attended the termination hearing, were called as witnesses, and were subject to being examined by Jennifer concerning the reports to the extent she wished to do so. The admission of these exhibits caused no surprise or unfair prejudice to Jennifer, and the juvenile court did not abuse its discretion in admitting them.

Exhibits fifty-four and sixty-one are reports to the court and to all interested persons by the Court Appointed Special Advocate (CASA) for the children. As noted above, exhibit fifty-four was admitted in underlying CINA proceedings. Jennifer's hearsay and lack of foundation objections went to exhibits one through sixty and not exhibit sixty-one. Her other objections included exhibit sixty-one, however. She was aware of the contents of exhibit sixty-one and aware it would be offered in evidence. Although the CASA had not been identified as a witness to be called at the termination hearing, she was present at the hearing and in fact Jennifer herself called the CASA as a witness and questioned her concerning both exhibit fifty-four and exhibit sixty-one. The admission of exhibit sixty-one caused no unfair prejudice to Jennifer, and the juvenile court did not abuse its discretion in admitting it.

We have not ignored Jennifer's objections to exhibits twenty-five, twenty-six, thirty, thirty-nine and fifty-five. Substantial questions exist concerning their admissibility and therefore on our de novo review we give them no consideration.

B. OBJECTION TO WITNESSES

In her pre-trial motion, Jennifer stated an objection to any witnesses not identified in response to interrogatories seeking such information. The GAL had

not identified Lois Taber, who served as the children's CASA, or Kelly Tee, a FR program supervisor who had been heavily involved in the children's cases. Both testified at the termination hearing. Jennifer asserts the trial court erred in allowing them to testify, in violation of her rights to due process of law.

Jennifer herself called Lois Taber as a witness, and thus has no ground for complaint concerning her being allowed to testify.

The GAL sought to call Kelly Tee as a "rebuttal" witness, to address evidence Jennifer had presented concerning what Jennifer did and did not know when she moved to Indiana. Jennifer objected, claiming Tee could not be a "rebuttal" witness because Jennifer had presented no witnesses. She also objected on the ground that Tee had not been listed as a witness in response to discovery requests. The juvenile court allowed the GAL to call Tee as a witness. Contrary to Jennifer's position, she had presented testimony of a witness, Lois Taber. She had also introduced numerous exhibits in evidence. Some of Jennifer's evidence, including but not limited to Lois Taber's testimony, did bear on the question of what Jennifer did and did not know about the possibility of an Interstate Compact transfer to Indiana when she moved to Indiana. The testimony of Kelly Tee may thus properly be seen as rebuttal to evidence presented by Jennifer.

In the alternative, allowing Kelly Tee to testify may be seen as allowing the GAL to reopen the evidence. When trial is to the court, the court has broad discretion to reopen the evidence and such discretion is to be liberally exercised. *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984). In juvenile cases the best

interests of children dictate that rules of procedure be liberally applied so that all probative evidence may be admitted. *Id.*

Whether the juvenile court's decision to allow the GAL to present Kelly Tee's testimony is seen as allowing rebuttal testimony, or is seen as allowing the GAL to reopen the evidence, Jennifer has not shown that it abused its broad discretion in allowing the testimony.

C. PERMANENCY HEARING

Jennifer complains there was no permanency hearing within twelve months of the children's removal on January 22, 1999, as required by Iowa Code section 232.104. The State responds that section 232.104(1)(b) allows the permanency hearing to be combined with a hearing to review or modify a dispositional order, and urges that an October 6, 1999 review hearing was such a combined hearing. The State also urges that Jennifer has not preserved error on this claim.

We need not decide whether the October 6, 1999 hearing encompassed a permanency hearing. Nothing in the record indicates that Jennifer ever presented to the juvenile court a claim that a permanency hearing had not been held, objected to the absence of a permanency hearing, or requested a permanency hearing. Jennifer has failed to preserve error on her complaint that a permanency hearing was not held.

D. OBJECTION TO WITNESS READING FROM DOCUMENTS

Early in the testimony of DHS social worker Gaye Todtz, Jennifer objected that, "It appears that the witness is reading from a document instead of testifying from her own personal knowledge." The trial court ruling consisted only of the

word, "Overruled." Jennifer complains that the ruling denied her due process of law by allowing Todtz to read from documents rather than testifying from personal knowledge.

The trial court's ruling does not indicate whether it overruled Jennifer's objection because Todtz was not reading from a document or because she was doing so but the court intended to allow her to do so. We will not speculate as to which is the case. Because the record contains no affirmative evidence that Todtz was in fact reading from a document, Jennifer has failed to preserve error on this issue.

E. SEPARATE COUNSEL FOR THE CHILDREN

Robert J. Phelps was appointed as counsel and as GAL for the children. In his capacity as GAL he filed and prosecuted the petition for termination of Jennifer's parental rights. Jennifer claims the juvenile court's failure to appoint separate counsel for the children denied her due process of law. The essence of her argument is that the GAL's view of the children's best interest, that termination of her parental rights should occur, conflicted with the children's position, that they should be reunited with her.

For two reasons we find Jennifer's complaint to be without merit. First, she at no time requested that the juvenile court appoint separate counsel for the children or objected to the GAL also continuing to serve as counsel as well as GAL, and thus has failed to preserve error on this claim. Second, as discussed further below, the record does not contain substantial evidence that the children's wishes conflicted with the GAL's view of their best interest, and to the extent any

such evidence appears in the record it was before the juvenile judge for his consideration.

Iowa Code section 232.113(2) provides:

> Upon the filing of a [termination] petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings. The same person may serve both as the child's counsel and as guardian ad litem.

This statutory provision on its face allows the same person to serve in both capacities. However, our cases make two particularly important points concerning such dual roles. First, it is the best interests, not the wishes, of children who are not mature enough to be self-determining that must determine the outcome of a case. *In re J.P.B.*, 419 N.W.2d 387, 391 (Iowa 1988). Second, the juvenile court must be made aware of potential conflicts perceived by counsel or the guardian ad litem. *In re G.Y.*, 486 N.W.2d 288, 289 (Iowa 1992); *J.P.B.*, 419 N.W.2d at 392. When such a conflict threatens, the court can then appoint counsel who is someone other than the guardian ad litem. *Id.*

Here the children were eight, six and two years of age at the time of the termination proceedings. The records discloses no affirmative statement by any of them concerning their wishes with respect to termination of Jennifer's parental rights or their placement. Given their youthful ages it would be surprising if it did. The record contains some evidence concerning the children's affection, or lack of affection, for Jennifer, from which it could be inferred that the oldest, Julia, perhaps Ronson, and by some stretch perhaps even Taylor, wanted to be with her. However, the evidence upon which Jennifer relies to make this point was contained in FR reports that were introduced in evidence and thus such

information was brought to the attention of the juvenile court at a time when the juvenile court could still have appointed as counsel someone other than the GAL.

In summary, Jennifer waived this issue by not raising it in the juvenile court, there is only a scintilla of evidence that might be seen as suggesting any one or more of the three children had desires at odds with the GAL's view of their best interest, and what small amount of such evidence existed was presented to the juvenile court. This claim by Jennifer is without merit.

F. EXCLUSION OF WITNESSES

In her pretrial motion Jennifer sought to have witnesses excluded from the courtroom while other witnesses were testifying. The juvenile court overruled the request. Jennifer claims the trial court ruling denied her due process of law.

Jennifer fails to state any authority in support of this issue. We may deem it waived. Iowa R. App. P. 14(a)(3). Further, whether or not witnesses should be excluded rests within the sound discretion of the trial court. *State v. Sharkey*, 311 N.W.2d 68, 70 (Iowa 1981); *Gaylock v. Coleman*, 493 N.W.2d 94, 99 (Iowa Ct. App. 1992). The anticipated witnesses were all involved in the case, involved in providing services and treatment to the children. Contrary to Jennifer's apparent position, it was possible termination would not be ordered. Further contrary to her apparent position, even if termination were ordered the witnesses would no doubt continue to be involved with the children for some time to come. The juvenile court gave cogent and valid reasons for denying exclusion, that the witnesses should be personally aware of what was occurring. No abuse of discretion is shown.

V. REASONABLE EFFORTS CLAIMS

Jennifer claims the DHS failed to make reasonable efforts to reunify her with her children. More specifically, she claims those failures consisted of failing to make any effort to transfer her case to the state of Indiana after representing to her those efforts were being made, denying her significant and meaningful contact with the children, and failing to provide additional services at her request. We address these claims in order.

Iowa Code section 232.102(7) requires that when, as here, custody of a child has been transferred to the DHS it "shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child." "Reasonable efforts" means "the efforts made . . . to eliminate the need for the removal [from the home] of the child or make it possible for the child to safely return to the family's home." Iowa Code § 232.102(10)(a).

From early in the CINA cases there was evidence before the juvenile court that Jennifer had been the subject of child abuse and neglect reports in two other states since 1996, and had left those states in what appeared to be attempts to avoid supervision and services. The juvenile court made findings to that effect in a January 7, 1999 Dispositional Order. Beginning with a November 7, 1998 Adjudicatory Order the juvenile court had at all times prohibited Jennifer from removing the children from the State of Iowa without its prior approval. From early in the CINA proceedings the juvenile court made it clear to Jennifer that because of her history of abuse and neglect and leaving other states to avoid services she would be required to address in Iowa the issues related to adjudicatory harm.

Jennifer at times spoke of a desire to return to Indiana. Later in the proceedings she requested of case workers that the CINA proceedings be transferred to Indiana so that supervision and services could occur there. She moved back to Indiana in early to mid-August of 1999, and gave birth prematurely to another child shortly thereafter. Her move to Indiana effectively ended any services that were being provided to her in Iowa, other than visitation between her and the children.

From November 1999 through March 2000 seven telephone visitations with her children were scheduled for Jennifer. Two were not held, one because the children did not want to talk to her and refused to do so, another because Jennifer could not be reached. During the others Ronson became very agitated and acted out, Julia reverted to a "parentified" role, being very concerned about the new baby's circumstances, and Taylor showed little interest and no apparent recognition of Jennifer. The GAL filed a termination petition on February 6, 2000. As a result of the counterproductive nature of the telephone visitations, the GAL filed a motion on February 22 asking that the telephone visitation be terminated.

On March 10, 2000, more than one month after the termination petition was filed, Jennifer filed a motion formally requesting that the CINA cases be transferred to Indiana, services prescribed by the case permanency plan be provided in Indiana, and she be allowed visitation with the children. In a ruling filed March 17, 2000 the juvenile court denied Jennifer's requests, stating its reasons for doing so.

The record shows that case workers held open to Jennifer the possibility of the CINA cases being transferred to Indiana, but only if placement with a

relative, rather than merely a change to a different foster care placement, could be arranged. Jennifer was requested to identify any relatives with whom the children might possibly be placed. She identified only her mother, who upon investigation indicated she was unwilling to take on such responsibility. A "Connie" contacted caseworkers and expressed interest, but she was unacceptable to Jennifer. Jennifer had at all times failed or refused to meet case plan requirements of drug testing and domestic abuse counseling. Although she had to some extent participated in certain other services for a time, and even made progress in some areas, her participation had later fallen off and her progress ceased and she later completely ended her participation. Given Jennifer's history of abuse and neglect, her leaving other states to avoid supervision and services, the offer and availability of services in Iowa, her history concerning supervision and services in Iowa, the apparent lack of any alternatives to foster care placement in Indiana, and the pendency of the termination case, the juvenile court's refusal to transfer the CINA cases to Indiana does not constitute a failure to use reasonable efforts toward reunification.

In the four months before she left for Indiana in August 2000, Jennifer only sporadically arranged to have visitation with her children, and then frequently missed visitation or was late in arriving for it. She made arrangements for a visitation which was to occur just before she left for Indiana, but then neither kept nor cancelled the appointment. After moving to Indiana she requested few telephone visits, and then was not available for one. Following an October 6, 1999 court hearing for which she returned to Iowa she had a visit with her

children, but appeared to be under the influence of drugs during the visit. From late October until mid-December she did not even seek any telephone visits. As noted above, the few telephone visits that occurred from November 1999 to March 2000 were upsetting and disruptive to the children and caused the older two to revert to inappropriate behaviors. In early March 2000 when Jennifer had returned to Iowa for court proceedings, a telephone visitation was arranged but she did not follow through. Visitations had, as found by the juvenile court, become upsetting, disruptive and counterproductive to efforts to deal with the children's behavioral problems. Given the foregoing facts and the pendency of the termination petition, the juvenile court did err in overruling Jennifer's request for further visitation. We find that the efforts made to facilitate visitation were reasonable and the juvenile court's overruling of Jennifer's request for additional contacts did not constitute a failure to use reasonable efforts to reunify.

Jennifer complains that the failure to arrange for services to be provided by the State of Indiana constitutes a failure to use reasonable efforts to reunify her with her children. All of the services she claims the State of Iowa should have arranged to make available to her in Indiana were ordered and made available to her in Iowa. She refused to participate in some, initially participated in others but then stopped, and then made herself unavailable for any of those services by moving to Indiana despite having been forewarned that such a move would make it difficult to provide services and would greatly reduce the chances of reunification. She was unwilling or unable to provide the name of an Indiana relative with whom the children could be placed. For substantial periods of time she would not provide Iowa caseworkers her address or telephone number in

Indiana, making it very difficult for them to communicate with her or attempt to help her. The record shows that she did participate in services briefly in Indiana in the late fall of 1999, but the services were oriented toward care of her premature newborn and ended by year's end. She in fact refused an Iowa caseworker's offer in October 1999 to help set up additional services in Indiana, saying she would do it on her own. Given these facts the juvenile court did not err in overruling the request that it provide in Indiana the same services that had been ordered and provided in Iowa. We find the services provided in Iowa were reasonable and the juvenile court's overruling of Jennifer's request that those services be provided in Indiana did not constitute a failure to use reasonable efforts to reunify.

VI. TERMINATION UNER IOWA CODE SECTOIN 232.116(1)(c)

As discussed in the next section of this opinion, we find that clear and convincing evidence supports termination under section 232.116(1)(b). We therefore need not address Jennifer's claim that termination under section 232.116(1)(c) is not supported by clear and convincing evidence. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

VII. TERMINATION UNDER IOWA CODE SECTION 232.116(1)(d)

Jennifer claims the State failed to prove by clear and convincing evidence the grounds for termination under Iowa Code section 232.116(1)(d). It provides that termination may occur when:

> *d.* The court finds that all of the following have occurred:
>
> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

> (2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.
>
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being giving the opportunity to do so. For the purpose of this subparagraph, "*significant and meaningful contact*" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997).

Jennifer does not claim that the first two elements of section 232.116(1)(d) were not proved by clear and convincing evidence, and they clearly were. She maintains that, "Element three has not been met." The third element requires, among other things, that a parent make "a genuine effort to complete the responsibilities prescribed in the case permanency plan," make "a genuine effort to maintain communication with the child," and "establish and maintain a place of importance in the child's life." For the reasons that follow, we find clear and convincing evidence shows Jennifer failed in all three respects. The third element was thus satisfied.

The responsibilities in the case permanency plan included substance abuse evaluation and periodic urinalysis to test for drug use. Jennifer not only never provided urine samples for periodic urinalysis, she also failed to even complete a substance abuse evaluation by failing to provide the urine sample

necessary for such an evaluation despite numerous requests over time that she do so. Based on her history of substance abuse, what appeared to be intravenous drug use at the time her baby was born prematurely in August 2000, and apparent drug use at the time of an October 2000 visit with her children, substance abuse evaluation and possible treatment continued throughout juvenile court proceedings to be a primary issue.

Case permanency plans as approved by the juvenile court required Jennifer to participate in domestic abuse counseling. The requirement was based on the fact the record showed, based in part on Jennifer's own reports to caseworkers, that she and her children had been abused by her male paramour and his children. Jennifer did not meet this requirement, and the record contains no substantial evidence she made any effort to do so. Although Jennifer made some efforts in the area of other responsibilities prescribed in the case permanency plan, by ending those efforts, terminating services, and moving to Indiana, she failed to make a genuine effort to *complete* those other responsibilities.

While being provided with supervision and services in Iowa Jennifer could have regular and frequent in-person visitation and communication with the children. She missed, without explanation, an in-person visitation that was arranged to occur immediately before she moved to Indiana. By moving to Indiana she made in-person visitation extremely difficult and infrequent. When she returned to Iowa for a court proceeding she appeared to be under the influence of drugs during the one visitation that she requested and was arranged. After moving to Indiana she seldom requested or made arrangements for

telephone visitation, and then did not participate in at least one that was arranged. When she later returned to Iowa for a court proceedings she failed to participate in a telephone visit that had been arranged at her request. Clear and convincing evidence shows that by failing and refusing to take advantage of available opportunities for visitation Jennifer has not made a genuine effort to maintain communication with the children.

Jennifer's removal of herself from the lives of the children by moving to Indiana, refusal for a time to provide a means of contacting her in Indiana, failure or refusal to pursue completion of case plan responsibilities, and failure to maintain contact and communication with the children, constitute clear and convincing evidence she has failed to establish and maintain a place of importance in the children's lives.

VIII. BEST INTERESTS

Even if the other statutory requirements for termination are met, a decision to terminate parental rights must nevertheless be in the best interests of the children. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986). Jennifer has a substantial history of neglect and abuse of her children. It initially involved the two oldest of the three children and subsequently involved all three of the children whose welfare is at issue in this case. It covers three states and four years. She has failed to make genuine efforts to correct the deficiencies and problems that resulted in the neglect and failure to supervise leading to the original adjudication in the underlying CINA proceedings. She has avoided supervision and services not only in Iowa, but in two other states previously. The children's lack of desire for contact and communication indicates the absence of

close bonding and the absence of a close parent/child relationship. The older two of the three children regress in their behaviors when they have contact with Jennifer. The youngest does not know Jennifer. All three appear to be thriving in foster care and have good prospects of adoption.

The best interests of the children are paramount in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). We give primary consideration to the physical, mental, and emotional condition and needs of the children. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). Children should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987).

At the time of the termination hearing the three children had been removed from Jennifer's physical custody for over sixteen months, Jennifer had made efforts to correct parenting deficiencies and problems in only certain areas and had abandoned those efforts and moved a substantial distance away from the children. Based on these and the other facts noted above, including the apparent absence of a close relationship between Jennifer and the children, we conclude that termination of Jennifer's parental rights to the three children is in the children's best interests. We conclude the juvenile court's termination order should be affirmed.

AFFIRMED.