IN THE COURT OF APPEALS OF IOWA

No. 1999-110 (9-297) / 98-2162
Filed June 23, 1999

FILED
JUN 23 1999
CLERK SUPREME COURT

IN THE INTEREST OF
C.A., A.J., and T.J., Minor Children,

J.J., Mother,

Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald Magee, Associate Juvenile Judge.

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

AFFIRMED.

F. David Eastman of the Eastman Law Office, L.L.C., Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Gregg R. Rosenbladt, Assistant County Attorney, for appellee-State.

Mark Young, Mason City, guardian ad litem for minor children.

Considered by Sackett, C.J., Streit, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PETERSON, S.J.

The mother, Jenny, appeals the termination of her parental rights to her three children. She claims her due process rights were violated by the State when it stopped pursuing actions likely to reunite her with the children even before the termination hearing. She also claims the State failed to show it had made reasonable efforts to eliminate the need for the children's removal. The court also terminated the fathers' rights, but they are not at issue here. We affirm the juvenile court.

Jenny is the mother of Cassandra, born in 1992, Al, born in 1994, and Travis, born in 1996. In October 1996 Jenny voluntarily placed them in foster care because she had been evicted and had no residence. In December 1996 the district court adjudicated them in need of assistance under Iowa Code section 232.2(6)(g) (1995).

At the review hearing in July 1997 the court found Jenny had pled guilty to a recent drug charge, had not provided a drug screen as requested, had not maintained employment, and had only recently begun to participate in supervised visitation three times per week. The court ordered Jenny to seek and maintain employment, to provide specimens for drug testing, and to participate in at least six hours of supervised visitation per week.

At the review hearing in November 1997 the court noted the variety of services provided to the parents, found the parents had made very little progress, and gave DHS discretion to increase or decrease visitation.

At the review hearing in February 1998 the court found Jenny was complying with most visitation and family therapy sessions, she had tested positive for

methamphetamine three times, and she had not maintained employment or a residence. The court ordered Jenny to participate in substance abuse treatment, individual and family therapy, and random drug tests. DHS recommended terminating the parents' rights.

In June 1998 Jenny and her boyfriend moved into a small house. She began to have supervised visitation there. The termination hearing scheduled for late June was continued to July and then to August. The court left the record open after the termination hearing until October for the parties to present additional evidence. The State presented evidence in October that Jenny had been arrested for possession of marijuana in September. She also tested positive for marijuana use.

In November 1998 the court terminated Jenny's parental rights to her three children pursuant to Iowa Code sections 232.116(1)(e) and (g).

Jenny contends her due process rights were violated by the State when it stopped pursuing actions likely to reunite her with the children even before the termination hearing had taken place. The due process violations Jenny asserts are that her visitation was not *increased* after the termination petition was filed and her boyfriend was not allowed to participate in family therapy.[1] Termination of parental rights requires that we scrutinize rather closely the procedure employed by the State in the termination proceedings to ensure due process requirements have been met. *In re S.R.*, 548 N.W.2d 176, 177-78 (Iowa App. 1996) Generally, the fundamental

[1] We note Jenny was still married at the time she claims her boyfriend should have been included in family therapy sessions.

requirement of due process is an opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S.Ct. 1011, 1020, 25 L.Ed.2d 287, 299 (1970); *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972). In our de novo review of the record, we do not find Jenny raised a due process claim in the juvenile court. Matters not raised in the trial court, including constitutional questions, cannot be raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). Jenny failed to preserve this issue for review.

Jenny also claims the State failed to show it had made reasonable efforts to eliminate the need for the children's removal. We find the State provided at least the following services: substance abuse treatment for Jenny, individual therapy for Jenny and the children, mental health therapy for Jenny, parents' skill development, supervised visitation, and family therapy. We find reasonable efforts were made to eliminate the need for the children's removal and to reunite the children with their parents.

AFFIRMED.

No. 98-2162. [1999-110 (9-297)] IN RE C.A., A.J., and T.J.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald Magee, Associate Juvenile Judge. **AFFIRMED.** Considered by Sackett, C.J., Streit, J., and Peterson, S.J. Opinion by Peterson, S.J. (4 pages $1.60)

Jenny is the mother of Cassandra, born in 1992, Al, born in 1994, and Travis, born in 1996. In October 1996 Jenny voluntarily placed them in foster care because she had been evicted and had no residence. At the review hearing in July 1997 the court found Jenny had pled guilty to a recent drug charge, had not provided a drug screen as requested, had not maintained employment, and had only recently begun to participate in supervised visitation three times per week. At the review hearing in February 1998 the court found Jenny was complying with most visitation and family therapy sessions, she had tested positive for methamphetamine three times, and she had not maintained employment or a residence. The court ordered Jenny to participate in substance abuse treatment, individual and family therapy, and random drug tests. DHS recommended terminating the parents' rights. The State presented evidence in October that Jenny had

No. 98-2162. [1999-110 (9-297)] IN RE C.A. (continued)

been arrested for possession of marijuana in September. She also tested positive for marijuana use. In November 1998 the court terminated Jenny's parental rights to her three children pursuant to Iowa Code sections 232.116(1)(e) and (g). Jenny contends her due process rights were violated by the State when it stopped pursuing actions likely to reunite her with the children even before the termination hearing had taken place. We do not find Jenny raised a due process claim in the juvenile court. Jenny failed to preserve this issue for review. Jenny also claims the State failed to show it had made reasonable efforts to eliminate the need for the children's removal. We find the State provided at least the following services: substance abuse treatment for Jenny, individual therapy for Jenny and the children, mental health therapy for Jenny, parents' skill development, supervised visitation, and family therapy. We find reasonable efforts were made to eliminate the need for the children's removal and to reunite the children with their parents.