IN THE COURT OF APPEALS OF IOWA

No. 6-745 / 96-1089

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

R.K., Mother,
Appellant.

DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge and Constance Cohen, Associate Juvenile Judge.

Mother appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

Thomas J. Clarke, Jr., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, John Sarcone, County Attorney, and Heather B. Dickinson and Emily A. McConkey, Assistant County Attorneys, for appellee-State.

Charles Fuson, Youth Law Center, Des Moines, guardian ad litem for minor children.

Considered by Habhab, P.J., Cady, and Huitink, JJ.

CADY, J.

Rebecca K. appeals an order by the juvenile court terminating her parental rights to two of her children, Coby and Cory. We affirm on our review.

Rebecca married Charles in 1981. They had four children. Coby was born August 18, 1992. Cory was born September 23, 1993. On April 28, 1994 the State filed petitions alleging Coby and Cory were in need of assistance due to abuse inflicted by Charles on one of the older children. All four children were removed from the home. The children were found to be in need of assistance following a hearing on June 10, 1994, and were returned to Rebecca. Charles was ordered to have no contact with the children. Through oversight, the juvenile court failed to file a written order following the adjudicatory hearing.

The children were again removed from Rebecca's care on June 23, 1994 following further allegations of abuse by Charles as well as Rebecca's paramour. A dispositional hearing was held in September 1994, followed by review hearings in March and July 1995. Following each hearing, the juvenile court entered orders confirming the CINA status of the children and continuing out-of-home placement with services. Rebecca and Charles divorced in October 1994.

Rebecca was cooperative with the service providers and participated in services. In July 1995, the two oldest children were returned to her care. They were removed a few weeks later, however, at Rebecca's request.

Coby and Cory were never returned to Rebecca's custody. On November 29, 1995, the State filed petitions to terminate the parental rights to Coby and Cory. After it was discovered the written adjudication order had never been filed following the June 10, 1994 hearing, the juvenile court entered an ex parte written order of the June 10, 1994 adjudication.

The termination hearing concluded April 18, 1996. The juvenile court terminated the parental rights of Rebecca and Charles pursuant to Iowa Code section 232.1161(c) (child neglected as the result of acts or omissions of parents), section 232.116(1)(g) (child under three cannot be returned after removed for six months), and section 232.116(1)(h) (neglect as a result of acts or omissions of parent which constitutes imminent danger to child despite services).

Rebecca appeals. She first claims the juvenile court lost its jurisdiction to consider the termination petition because of its failure to file a written adjudication order following the June 10, 1994 adjudicatory hearing. She also asserts the evidence did not establish the children could not be returned to her care.

We reject the claim the juvenile court lost its jurisdiction over the termination proceeding by failing to timely file the predicate adjudicatory order. The juvenile court is given exclusive jurisdiction over proceedings to terminate parental rights arising out of child in need of assistance proceedings. Iowa Code § 232.109 (1995). A procedural oversight in the CINA proceedings may prevent the juvenile court from granting termination, but it does not divest the court of its underlying jurisdiction.

See id. Moreover, we are slow to make a requirement in CINA proceedings a prerequisite in a subsequent termination proceeding unless the requirement is substantive in nature and tied to the concept of due process. Procedural mistakes which do not impact a substantive right of the parties in CINA proceedings must not be used to void termination proceedings because of the harmful delay resulting to the children. *See In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993) (claim that service providers failed to use reasonable services to achieve reunification may not be used to void termination proceeding). Furthermore, courts generally have the power to correct mistakes and defects by entering orders at any time prior to an appeal to show the proper course of the proceedings. *See Garden Gate, Inc. v. Northstar Mfg.*, 526 N.W.2d 305, 310 (Iowa 1995).

We also reject the claim the State failed to establish by clear and convincing evidence the children could not be returned to their mother's care. Time is a critical component in a termination proceeding. Parents are required to respond to services to enable their children to be returned to their care within a reasonable period of time. Some progress is not enough. *See In re D.A.*, 506 N.W.2d 478, 479 (Iowa 1993). There must be adequate overall care in all critical areas. *Id.* The issue does not rest with the sincerity of the efforts by the parents or the cooperative nature of the parents, but examines whether the efforts are sufficient to meet the needs of the child. *See In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Even "substantial progress" is insufficient

to avoid termination if the child cannot be returned home. *See In re M.W.*, 458 N W 2d 847, 850 (Iowa 1990).

In this case, the mother was provided abundant services over a long period of time, including therapy and parenting programs. Notwithstanding, she continues to lack insight into the underlying problems and judgment to overcome those problems. She remains inconsistent in her parenting and has been unable to put the parenting education into consistent action to enable her to be reunited with her children. She was unable to care for the two older children when given the opportunity. Furthermore, Coby has behavioral problems, which require special skills Rebecca has been unable to display. We find clear and convincing evidence that the circumstances which led to the CINA adjudication continue to exist, and the children cannot be safely returned home.

We have considered all claims raised by Rebecca and affirm the decision of the juvenile court.

AFFIRMED.