IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 7-426 / 96-2066

IN THE INTEREST OF S.J.F., A Minor Child,

T.L.S., Mother,
Appellant.

000087

Appeal from the Iowa District Court for Mahaska County, Michael R. Stewart, District Associate Judge.

The mother appeals an order adjudicating her child in need of assistance (CINA). **AFFIRMED.**

Ryan B Moorman, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, and Vernon G. Stejskal, Assistant County Attorney, for appellee-State.

Jam[redacted] Blomgren of Pothoven, Blomgren & Stravers, Oskaloosa, guardian ad litem for minor child.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The mother, Tracy, appeals an order adjudicating her child in need of assistance (CINA). She contends the court erred in failing to grant her motion to dismiss because the adjudicatory hearing was not held within sixty days of the filing of the CINA petition as required by Iowa Rule of Juvenile Procedure 4.5.

Tracy F. is the mother of Samantha Jo F., born October 4, 1995. The day after her birth, a temporary removal order was entered, placing her in the custody of the department of human services (DHS). The order was issued because Tracy was then involved in an action to terminate her parental rights of her other two children. On October 6, 1995, the State filed a petition alleging Samantha was a child in need of assistance. On October 26, 1996, the court ordered that the temporary removal should be continued, ordered paternity testing, and ordered that an adjudicatory hearing on the CINA petition be scheduled upon determination of paternity.

Paternity tests results were obtained in June 1996. On August 19, 1996, the adjudicatory hearing was scheduled for September 5. On August 26, the parties agreed to continue the hearing to September 26. On September 26, the court scheduled [redacted] for October 9, 1996.

Prior to [redacted] on October 9, Tracy moved to dismiss the CINA petition, arguing the adjudicatory hearing was not held within sixty days of the filing of the petition in the violation of Iowa Rule of Juvenile Procedure 4.5. The court denied the motion. Following the hearing, the court entered an order on October 21 finding

Samantha in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (1995). At the dispositional hearing in November 1996, the court placed Samantha in the custody of her father, Glen G.

Tracy appeals asserting she was prejudiced by this unjustified delay between the filing of the petition and the adjudication.

Scope of review. We review a juvenile court's finding of a child in need of assistance (CINA) de novo *In re L.K.S.*, 451 N.W.2d 819, 821 (Iowa 1990). While we are not bound by the juvenile court's fact findings, we give them weight, especially when considering the credibility of the witnesses. *Id.*; Iowa R. App. P. 14(f)(7). Our paramount concern lies in the welfare and best interest of the child. *In re N.M.W.*, 461 N.W.2d 478, 480 (Iowa App. 1990).

In support of the mother's motion to dismiss the petition, she cited Iowa Rule of Juvenile Procedure 4.5, which provides.

> The adjudicatory hearing on a child in need of assistance petition shall be held within sixty days of the filing of said petition unless good cause to the contrary is shown. Failure to comply with this rule shall not result in automatic dismissal, but any such failure may be urged as grounds for discretionary dismissal.

Id. We addressed this rule in *In re N.M.W.* where we stated, "This opinion should not be read to mean that we condone the setting of CINA adjudicatory hearings beyond the period provided by rule 4.5, for we do not. But when this does occur, the parties should bring it to the juvenile court's attention on the earliest date possible." *In re N.M.W.*, 461 N.W.2d at 481. The pivotal question in our determination of this issue

is whether good cause is shown pursuant to Iowa Rule of Juvenile Procedure 4.5. We determine there was good cause shown as the delay in holding the adjudicatory hearing involved the paternity of Samantha.

Furthermore, the mother continuously acquiesced in the delay of the hearing. The mother was aware of the delay and the reason for the delay at the time of the foster care staffing in April, 1996, and no objections were made. Scheduling problems further delayed the hearing. The July request to schedule the hearing immediately preceded a three-week summer vacation of the presiding judge. The first day after the judicial vacation, on August 19, 1996, the case was set for a pretrial scheduling conference on September 5, 1996. One week later, this date was continued until September 26, by agreement of *both parties.* It was not until the commencement of the adjudicatory hearing on October 9, 1996 that the mother lodged her objection.

The next question is whether the mother was unduly prejudiced because of the delay. We find there was no such prejudice; the facts revealed she was an unfit parent. The juvenile court reasoned:

> [redacted] of services . . . the mother remains unable to consistently [redacted] the child . . . the[re is also a] lack of significant [redacted] in the present case in eliminating the continuing [redacted] of care for the child in the present case.
>
> The final and perhaps unifying factor is the mental health of the mother . . . [who] has been diagnosed as suffering from a recurrent major depressive disorder . . . the mother's depression seems quite severe and . . . she is presently not receiving treatment for her depression . . . .

> This untreated major depressive disorder is doubtlessly a major factor in the inability of the mother to care for and nurture the child on a consistent basis.

The mother may have actually been benefitted by the delay as she was given a longer time period in which to improve her parenting skills and demonstrate stability of mental health. We thus find no prejudice.

We are mindful in juvenile CINA cases that time is of the essence perhaps more so than any other type of case before the courts. Children need the security provided by knowing where they live and who is taking care of and loving them. It is therefore critical to adhere to the time frames set out by either the supreme court or the legislature in every phase of a CINA case. This case should not have gone on for as long as it did. Yet, on our de novo review, we do not find grounds to reverse and dismiss. It caused the mother no prejudice and would serve no purpose but to delay the ultimate permanency for Samantha.

We accordingly affirm the termination and the district court's ruling not to dismiss.

AFFIRMED.

Sackett, P.J., specially concurs without opinion.