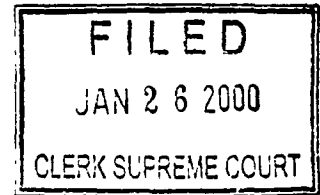


IN THE COURT OF APPEALS OF IOWA

No. 1999-608 (9-869) / 99-1248
Filed January 26, 2000

IN THE INTEREST OF D.N., Minor Child,
K.S., Mother,
Appellant.



Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
Associate Juvenile, Judge.

Mother appeals from the juvenile court order terminating her parental rights
to one of her children. **AFFIRMED.**

Robert J. Rehan, Sioux City, for appellant.

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

Michele Dreibelbis of the Juvenile Law Center, Sioux City, guardian ad litem
for minor child.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

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VAITHESWARAN, J.

Kim appeals an order terminating her parental rights to one of her children. She contends her rights should not have been terminated because the State did not make reasonable efforts to facilitate visitation. We affirm.

I. Background Facts and Proceedings

Kim and Dexter are the parents of Danielle, born on September 29, 1995. On June 15, 1998, at 1:42 A.M, a car driven by Dexter was stopped by Sioux City police officers for a traffic violation. Kim, Danielle, and another man also were in the car. On searching the car, the police discovered cocaine. The police arrested the adults and removed Danielle from her parents' care. Two days later, the State filed a child in need of assistance petition on behalf of Danielle. Her parents did not appear at the temporary removal hearing, nor did any one appear on their behalf. The court ordered temporary custody, care and control to remain with the Department of Human Services. The court further ordered that "the parents are not to have visitations with Danielle until such time as they both provide clean UA's to the Department of Human Services."

On August 13, 1998, Kim appeared at a removal/adjudicatory hearing. Her attorney advised the court that the State had dismissed criminal charges against her, but admitted neither parent had submitted to urinalysis drug screens as required to continue visitation with Danielle. The court adjudicated Danielle a child in need of assistance, ordered the Department to conduct a psychosocial evaluation, and again stated "[v]isitations are not to be initiated until the parents have submitted drug-free urinalysis samples."

The court held a dispositional hearing on December 22, 1998. Neither parent appeared, although an attorney was present and resisted the State's recommendation to move towards termination of Kim's rights. The court noted Kim had a long history of unsuccessful services with human service departments, resulting in the voluntary termination of her rights to parent her four older children. The court further found Kim and Dexter "have failed to avail themselves, even minimally" of the Department's services, following removal of Danielle. Accordingly, the court waived the Department's obligation to make reasonable efforts to reunite the family.

On January 21, 1999, Kim formally applied for visitation, after the Department denied her informal requests. In support of her application, she pointed to three urine tests, which she voluntarily took, all of which were negative. The juvenile court found Kim had not visited with Danielle for over six months due to her refusal to cooperate with services and her failure to keep the Department informed of her whereabouts. The court concluded visits would remain suspended until Kim could demonstrate compliance with her case plan.

On May 3, 1999, the State petitioned to terminate the parental rights of Kim, Dexter, and an unknown biological father. Kim did not appear at a permanency hearing on May 5 but did appear for a consolidated permanency review/termination hearing on May 28, 1999. The juvenile court terminated Kim's rights pursuant to Iowa Code sections 232.116(1)(b), (c), (d), and (g) (1997). The court also terminated the rights of Dexter and the unknown father. Only Kim appeals.

II. Error Preservation/Waiver of Argument

Kim contends the State failed to make reasonable efforts to reunite the family. The State responds that Kim failed to preserve error on this issue. We disagree. Kim had an obligation to demand services prior to the termination hearing. See *In re B.K.*, 500 N.W.2d 54, 57 (Iowa 1993). She did so by filing an application for visitation. Therefore, she preserved error.

The State additionally contends Kim waived error by failing to cite authority or challenge the sufficiency of the evidence to support termination. We agree Kim does not contest the sufficiency of the evidence to support termination under Iowa Code sections 232.116(1)(b), (d), (g). However, her challenge to the efforts made by the State to reunite her family is a direct challenge to termination under Iowa Code section 232.116(1)(c)(2).¹ Accordingly, we conclude Kim did not waive error as to the sufficiency of the evidence to support termination under that subsection.

III. Standard of Review

We review termination proceedings de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

¹ That subsection requires the State to establish: “[s]ubsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.”

IV. Reasonable Efforts

Reasonable efforts to reunite a parent and child are required prior to termination of parental rights. Iowa Code § 232.102; *In re M.B.*, 595 N.W.2d 815, 818 (Iowa App. 1999). Reasonable efforts include visitation arrangements to facilitate reunification while at the same time protecting the child. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996).

We conclude the Department's efforts to facilitate reunification through visitation were reasonable under the circumstances. The Department afforded Kim a supervised visit with Danielle on June 19, 1998, which, according to the worker, "appeared to go okay." Kim attended a second scheduled visit on June 22, 1998. At that time, the Department asked her to submit to a urine test. She refused. A third visit was scheduled for June 24, 1998, after the emergency removal hearing. Kim did not appear for the visit and the Department lost contact with her until August.

On August 13, 1998, Kim again refused to submit to a urine test. Following a screening later that month, a clinician concluded based on Kim's self-report that she was abusing cocaine. Although Kim concurred in the recommendation that she abstain from mind-altering drugs, Kim did not participate in any follow-up treatment. She continued to have no contact with Danielle.

In September 1998, police arrested Kim for solicitation for prostitution. On December 15, 1998, December 28, and January 4, 1999, Kim voluntarily came to the Department and submitted to urine tests, which were all negative for drugs. By this time she had not seen Danielle for six months.

Kim did not appear at the December 22 dispositional hearing and no evidence was presented on her behalf. It was at this hearing that the court waived the Department's obligation to make further reasonable efforts at reunification.

Although Kim passed three successive urine tests, her own efforts to comply with the court's prerequisite to visitation came too late. As the Department pointed out in its February 25 case permanency plan, "[o]n several occasion (sic) (06-22-98, 07-23-98, 08-06-98, 08-10-98 and 08-12-98), Kim and Dexter have been given the opportunity to submit to UA's but have refused or was not available." We have stated, "the crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). We accordingly reject Kim's challenge to the Department's efforts at reunification and affirm the termination of her parental rights.

AFFIRMED.