IN THE COURT OF APPEALS OF IOWA

No. 2-981 / 12-1739
Filed November 15, 2012

IN THE INTEREST OF I.K. AND V.K.,
Minor Children,

E.K., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Cheryl Traum, District Associate Judge.

A mother appeals an order placing her children in the custody of the Department of Human Services. **AFFIRMED.**

G. Brian Weiler, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Julia S. Kim, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County Attorney, for appellee State.

Lori Keiffer-Garrison, Rock Island, Illinois, for appellee father.

Patricia Rolfstad, Davenport, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

A mother, Elizabeth, appeals the district court's order placing her children, V.K., (born 2009), and I.K., (born 2011), in the custody of the Department of Human Services (DHS). She contends the district court erred in admitting the hair stat reports, the removal was not based on substantial evidence of imminent risk, and it was not the least restrictive disposition.

We review child-in-need-of-assistance proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). Our primary concern is the welfare and long-term, as well as immediate, best interests of the children. *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989).

The issue is whether the juvenile court properly removed the children from the custody of their mother. Iowa Code section 232.95 (2011) states the trial court may remove children from the home "if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child's life or health." If removal is ordered, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal. Iowa Code § 232.95(2)(a)(1).

We find the record supports the removal. The children are very young and cannot take care of themselves. This family has been involved with DHS since May of 2011 due to an incident of domestic violence after the father had taken methadone and drunk alcohol. At that time, a safety plan was put into place that involved the father moving out of the family home and only having contact with the children through supervised visitation with a designated worker. Since that

time there have been on-going concerns that the parents are not following the safety plan, particularly that Elizabeth is allowing the father to see the children outside the supervised visits. One particular instance occurred on August 10, when a service provider attempted to do a drop-in visit, and could hear V.K. say "daddy, daddy, door" when the provider knocked. While waiting for the police to arrive to assist her, the provider saw a man matching the father's description leave the apartment complex in a vehicle matching the father's.

Elizabeth minimizes the domestic violence in her relationship with the father and is unwilling to put the children's safety above her relationship with him. Elizabeth has not complied with the recommended treatment of her mental health concerns. Multiple services have been offered to the family, including but not limited to, behavioral health intervention services for Elizabeth, domestic violence counseling, and parental counseling and education services. In the most recent report to the court, DHS reported Elizabeth had been increasingly intimidating and violent towards those offering her services.

Elizabeth focuses on the admissibility of hair stat tests, claiming they were the primary reason for the removal of the children. The district court was clear, "[t]he hair stat tests are only one reason for the removal, but not the only reason." The DHS worker testified that removal was necessary to avoid imminent risk to the life or health of the children and we agree that substantial evidence supports the removal. Even without the hair stat results, the evidence the parents are not complying with the safety plan is substantial. The children's safety is paramount. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially).

AFFIRMED.