

IN THE COURT OF APPEALS OF IOWA

No. 3-490 / 13-0481

Filed June 26, 2013

**IN THE INTEREST OF V.L. and L.L.,
Minor Children,**

**V.L. and L.L., Minor Children,
Appellants.**

Appeal from the Iowa District Court for Polk County, Romonda D. Belcher,
District Associate Judge.

The attorney and guardian ad litem for two children appeals from a juvenile court child in need of assistance permanency order continuing placement of the children for an additional six months. **AFFIRMED.**

Congarry Williams and M. Kathryn Miller, Juvenile Public Defenders, for appellant minor children.

Kate Strickler of Carr & Wright, P.L.C., Des Moines, for appellee-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee-State.

Jessica Chandler, Windsor Heights, for father.

Considered by Potterfield, P.J., Tabor, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.

Ashley is the mother and Levi the father of V.L. and L.L. (the children) who were three and one-half and about two and one-half years of age respectively at the time of a March 13, 2013 child in need of assistance (CINA) permanency hearing. The attorney and guardian ad litem for the children appeals from a resulting juvenile court order continuing placement of the children for an additional six months. We affirm.

Ashley and Levi, both in their early twenties, have never been married. In early 2012 Ashley had been living with her mother and the children in Newton, Iowa. In April 2012 Ashley and the children moved out of the grandmother's home. They lived in a motel briefly until Ashley, unemployed, could no longer pay the motel. Ashley was then homeless and dropped the children off at Levi's residence in Des Moines. Levi shortly thereafter lost his job, could not pay bills, and moved to Jasper County with the children to stay with his mother.

In late June 2012 the Iowa Department of Human Services (DHS) received a complaint that the children were wandering the neighborhood. The initial investigation by the DHS indicated the paternal grandmother had come home and found Levi passed out asleep with the front door open. During a resulting child protective assessment Levi and the children moved back to Des Moines.

On July 11, 2012, the police were called for a welfare check at Levi's home. They were informed Levi had been using methamphetamine, the water had been turned off, and an eviction notice had been served the preceding day.

After repeated attempts by the police to get a response, Levi came to the door. He appeared to be extremely intoxicated, and could not provide requested information. The police found living conditions to be unsafe with trash, dirty clothes, and other items strewn around. They found the children sleeping in a room with broken glass and a knife on the floor. The children were dirty, and there was no food, diapers, or clean clothing for them. The police removed the children and placed them in emergency shelter. They arrested Levi for child endangerment. Criminal records indicated Levi had suffered from substance abuse problems for several years. Ashley remained unemployed and homeless.

On July 12, 2012, the juvenile court entered an ex parte removal order placing the children in the temporary legal custody of the DHS for emergency shelter placement. Following a July 17 removal hearing the court confirmed the removal and placed temporary legal custody of the children with the maternal grandmother, subject to DHS supervision. The children have thereafter remained in that status.

On August 6, 2012, the court held an adjudication hearing. Ashley did not attend. The court adjudicated the children to be CINA, for parental neglect, failure to exercise reasonable supervision, and lack of adequate care because of mental condition or drug abuse. It ordered the DHS to prepare a case permanency plan and a social report.

A September 14, 2012 juvenile court disposition order found the primary permanency goal to be reunification, adopted the case permanency plan that had been prepared, and ordered all parties to comply with it. The court further

ordered that Ashley “provide hair stat as previously requested” and “complete mental health evaluation and follow all recommendations.” It also ordered that Levi “sign releases to DHS for completed substance abuse evaluations—no additional evaluation required.” Both parents had attended this hearing.

Following an uncontested January 2, 2013 disposition review hearing, attended by Ashley but not Levi, the juvenile court found that the parents were “minimally complying with services to address substance abuse and inability to provide for the children’s health, safety and welfare.” It approved the case permanency plan and ordered that it be complied with by all parties.¹ The court ordered Ashley to provide contact information so the DHS could ascertain the appropriateness of visits taking place at her home, that she “provide hair stat immediately,” and that she “complete mental health treatment.” It ordered a family team meeting, which was then scheduled for and held on January 14. Ashley did not attend. Levi arrived forty-five minutes late, and then indicated he was in a hurry and needed to leave. Levi struggled to communicate with the team about what was going on in his life and what he needed to do. He did at last sign the releases that the court had four months earlier ordered him to sign.

¹ In her response to the attorney/guardian ad litem’s petition on appeal, Ashley asserts in part that the court’s January 2, 2013 review order “does not order Mother to complete a substance abuse evaluation, nor does it order her to comply with drug treatment,” and that “the substance abuse treatment ordered in the March 13, 2013, Permanency Order was not previously ordered.” We note that, partly to the contrary, the updated case permanency plan contained in a “report to the Court,” dated December 27, 2012, and introduced as State’s Exhibit 1 at the January 2, 2013 hearing recommends that Ashley “*complete a hair stat and substance abuse evaluation and follow all recommendations*” (emphasis added), and that in its January 2, 2013 order the juvenile court adopted this case permanency plan and ordered all parties to comply with it.

The juvenile court scheduled a permanency hearing for March 13, 2013. The DHS prepared a March 4 "Report to the Court." The report summarized Ashley's and Levi's failures and delays concerning court-ordered information and services. It also, however, noted that Ashley had completed a substance abuse evaluation in January 2013, even though she had not yet followed up with recommended outpatient treatment. The DHS recommended the filing of a petition to terminate the parental rights of both parents.

The juvenile court held what it has characterized as an "uncontested" permanency hearing on March 13. Ashley was present, but Levi was not. The children's attorney and guardian ad litem joined the State's recommendation that parental rights be terminated. Ashley argued she had "made significant progress recently, especially." She had acquired a driver's license, had secured employment, and had access to a car. Ashley expressed a willingness to submit immediately to the long-delayed hair stat test, stated she was planning to begin urinalysis testing, and stated she was going to sign a release so the court and DHS could see the recommendations that resulted from her substance abuse evaluation. She requested a "six-month extension to work toward reunification."

By the time of the March 13 hearing Levi's telephone had been shut off, his address had changed, and he had had no contact with his attorney since the January 14 family team meeting. Levi had failed to appear for a March 4 trial on his child endangerment charge, and a warrant for his arrest was outstanding. His attorney stated that Levi had earlier agreed to participate in services and follow recommendations. Levi's attorney stated that Levi had indicated his problems

were largely those of lacking employment, transportation, and finances. His attorney stated that Levi also requested “additional time.”

The juvenile court found that out-of-home placement of the children remained necessary due to Ashley’s non-compliance with drug screens, substance abuse treatment, and mental health evaluation, and Levi’s unresolved substance abuse issues and pending criminal arrest warrant. It further found that the children would be able to be returned home within six months if Ashley provided negative hair stat/drug screens, re-engaged in substance abuse treatment, completed a mental health evaluation, and followed recommendations; Levi addressed his criminal matters, provided negative drug screens, obtained a new substance abuse evaluation and followed recommendations, and participated in therapy; and the parents cooperated with Family Safety, Risk, and Permanency Services and attended scheduled visits. The court ordered the case permanency plan modified by “grant[ing] a six-month extension” and scheduled a permanency review hearing for September 3, 2013. The court’s order is a permissible result of a permanency hearing, being authorized by Iowa Code section 232.104(2)(b) (2013).

The children’s attorney and guardian ad litem appeals. The State did not appeal.

We review a permanency order de novo. We review both the facts and the law and adjudicate rights anew. Although we give weight to the juvenile court’s findings of fact, we are not bound by them. There is a rebuttable presumption that the child’s best interests are served by parental custody. The best interests of the child are paramount to our decision.

In re K.C., 660 N.W.2d 29, 32 (Iowa 2003) (citations omitted).

The children's attorney and guardian ad litem asserts the juvenile court erred in granting a six-month extension, arguing the parents had not complied with ordered services during the eight months the children had been removed. Ashley responds that she made progress, and the progress she has made is sufficient to demonstrate she is amenable to services and warrant the six-month "extension" ordered by the juvenile court.

Neither Ashley nor Levi can credibly assert they were not slow and inconsistent in responding to the juvenile court's orders and services. Ashley attributes her failure to engage more rapidly and completely in services to her homelessness and lack of transportation. We note, however, that with some support in the record, following the January 3, 2013 disposition review hearing the court found that the parents were "minimally complying with services to address substance abuse and inability to provide for the children's health, safety and welfare." Further, by the time of the later permanency hearing Ashley had secured a driver's license, had access to a vehicle, was residing with a friend, and was employed. She was maintaining contact with the children, had undergone a substance abuse evaluation, was on a waiting list for substance abuse counseling, was willing to be tested for drug usage, and had the support of her mother to work toward reunification.

Ashley's delays and inconsistencies in responding to court orders and services make the issue presented an extremely close one. On our de novo review we somewhat cautiously agree with the juvenile court's conclusion that

Ashley's recent progress, even if belated and somewhat limited, supports and warrants a six-month "extension" pursuant to section 232.104(2)(b).

The juvenile court's challenged order relates not only to Ashley, but also to Levi. Our conclusion regarding Ashley does not address Levi's situation. As a practical matter, however, we conclude that for judicial economy any decision by the juvenile court concerning whether a petition to terminate Levi's parental rights should be filed can await developments that occur during the "extension" granted by the juvenile court.

For the reasons stated, we affirm the challenged order of the juvenile court.

AFFIRMED.