

IN THE COURT OF APPEALS OF IOWA

No. 3-601 / 13-0513

Filed July 10, 2013

**IN THE INTEREST OF D.A.B.,
Minor Child,**

B.B., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Deborah Farmer Minot, District Associate Judge.

A mother appeals from a juvenile court permanency order changing the permanency goal from reunification to “another planned permanent living arrangement.” **AFFIRMED.**

Jean Lawrence, Iowa City, and Lauren Ulrich, Student Legal Intern, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet Lyness, County Attorney, and Patricia Wier, Assistant County Attorney, for appellee.

Anthony Haughton, Cedar Rapids, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

The mother appeals from a juvenile court order changing the permanency goal in a child-in-need-of-assistance case from reunification to “another planned permanent living arrangement” (APPLA) under Iowa Code section 232.104(2)(d) (2011). The mother contends the juvenile court order is not supported by clear and convincing evidence, and requests an additional six months to work toward reunification. We affirm.

I. Background Facts & Proceedings

The mother has four children: E.B. (born 1998), V.B. (born 2002), D.B. (born 2004), and M.B. (born 2007). The juvenile court adjudicated all four children as children in need of assistance. D.B., however, is the only child that was removed from the mother’s care. This appeal relates only to D.B.’s permanency hearing.

The mother is married to Steve; he is the father of M.B. only. E.B. and V.B. have the same father. As paternity testing ruled out D.B.’s putative father, the identity of D.B.’s father is unknown. At all times prior to D.B.’s removal, the mother, Steve, and all the mother’s children lived together. Shortly after giving birth to M.B., the mother suffered a stroke that caused brain damage. The mother self-reports a diagnosis of borderline personality disorder and Wernicke’s encephalopathy.

From an early age, D.B. exhibited alarming behaviors at school and at home. The mother reported to the school psychologist that D.B. had harmed animals and threatened to harm his family and himself. At school D.B. fought

with other children, ate thumb tacks, ate woodchips and dirt, ripped off the tips of pencils and swallowed them, ripped up papers and swallowed them, and talked to stuffed animals about killing them.

In October 2011, D.B. reportedly attempted to commit suicide by hanging. Despite visible injury to his neck, the mother did not take D.B. to the hospital until the next day. D.B. was then admitted to the psychiatric unit. The mother attempted to remove D.B. from the hospital against medical advice. After almost two weeks in the psychiatric unit, the treating physician discharged D.B. from the hospital and recommended D.B. return to school.

The day after D.B.'s discharge from the psychiatric unit, the mother did not send D.B. to school. The mother told the school principal that D.B. had broken a lamp and was threatening to kill himself. D.B. was then readmitted to the psychiatric unit. Staff noted that D.B. exhibited symptoms consistent with post-traumatic stress disorder (PTSD), including nightmares, flashbacks, hypervigilance, avoidant behaviors, increased irritability, and hyperarousal.

Soon after his re-admission, hospital staff expressed grave concerns about the mother's ability to understand the serious nature of D.B.'s mental health issues. When the family visited D.B., staff observed the mother giving D.B. unknown medications. D.B. reported to staff that his mother made inappropriate comments to him, including threats to punish or abandon him for sharing his emotional responses to his situation with the medical team. After the mother again attempted to discharge D.B. from the hospital against medical advice, the hospital initiated involuntary mental health commitment proceedings.

On November 7, 2011, the State filed a petition for temporary, emergency removal seeking to continue D.B.'s out-of-home placement at the psychiatric unit of the hospital for medical treatment. The court granted temporary, emergency removal. In a subsequent, contested hearing, the juvenile court confirmed removal and continued placement in the psychiatric unit. In light of D.B.'s removal and placement, he was not involuntarily committed. In December, D.B. was transferred to the Four Oaks PMIC (psychiatric medical institute for children).

The State then petitioned the court to adjudicate D.B. and his three siblings as children in need of assistance. In May 2012, the court held an adjudication hearing. Evidence presented at the adjudication hearing established that the mother was verbally abusive and threatening towards D.B. during his stay in the psychiatric unit. On one day, the mother called the hospital more than thirty times. She also encouraged D.B. not to trust hospital staff, Department of Human Services (DHS) providers, and prospective foster parents. The juvenile court found,

Parental mental illness and medical conditions, lack of follow through with recommended services, failure to appropriately supervise and discipline the children, resistance to intervention, and inability or unwillingness to recognize and acknowledge these issues has, over a period of many years, created a stressful, chaotic, and unpredictable home which has negatively impacted all the children to various degrees. All of the children have received mental health diagnoses warranting psychiatric or remedial services. The three older children[, including D.B.,] have special educational and emotional needs, which are well-documented. Without intensive services, the children's problems, as well as the conditions that have prevailed in the home for the past several years, will certainly fail to improve and will likely worsen.

In a thorough and well-written decision, the court found overwhelming evidence to support adjudicating D.B. as a child in need of assistance under Iowa Code section 232.2(6)(f) and section 232.2(6)(c)(2). The court also adjudicated D.B.'s three siblings as children in need of assistance.

After the adjudication hearing, the mother's visits with D.B. increased and D.B.'s behavior became even more disruptive. The mother's phone calls to D.B. were increasingly inappropriate and caused D.B. to become upset and cry. D.B.'s school reported that his behavior would escalate before and after his weekend visits at the mother's home. D.B. verbally threatened, kicked, bit, and threw items at the staff at Four Oaks. D.B. inexplicably began to urinate in inappropriate places.

In September 2012, Steve physically abused the mother in front of the children. The incident of domestic violence resulted in Steve's arrest and a no-contact order preventing Steve from having any contact with the mother or any of her children. Steve's absence placed a heavy burden on the mother to control the chaotic home.

On November 5, 2012, January 2, 2013, and January 15, 2013, the juvenile court held a contested permanency hearing. During the permanency hearing the State presented evidence that D.B.'s behaviors had escalated significantly between the adjudication hearing and the permanency hearing. D.B.'s increasingly disruptive behavior positively correlated with the amount of time spent in the mother's home. As a result, the DHS reduced the mother's visits with D.B. and her phone calls to him were fully supervised. The family

home remained chaotic and the mother continued to struggle with D.B.'s siblings still living in the home.

Shortly after the first day of the permanency hearing, D.B. ran out in front of a moving school bus. D.B. said he ran out into traffic on purpose because he wanted to kill himself. Four Oaks staff testified that D.B.'s behaviors had become "severe" and he could not be cared for safely at home or even by a highly-trained foster family. D.B. needed "100% supervision" to prevent him from harming himself or others.

At the conclusion of the permanency hearing, the State recommended that the court change the permanency goal from reunification to APPLA. The State further recommended that the court direct the DHS to identify an appropriate foster home for D.B. after his release from Four Oaks. The DHS and D.B.'s guardian ad litem joined in these recommendations.

The juvenile court found "clear and convincing evidence that [D.B.] cannot be returned to the care of his mother now or at any time in the foreseeable future." The court also found that terminating the mother's parental rights was not in D.B.'s best interest because of the strong familial identity, his relationships with his siblings, and his age. As a result, the juvenile court changed the permanency goal to APPLA.

The mother appeals the juvenile court's permanency order.

II. Standard of Review

Our review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give non-binding deference to the juvenile

court's factual findings. *Id.* In reviewing the juvenile court decision, the child's best interest is our primary concern. *Id.*

III. Analysis

The mother argues that the juvenile court erred in changing the permanency goal from reunification to APPLA because clear and convincing evidence did not support such a finding. Alternatively, the mother contends the juvenile court erred in refusing to grant the mother an additional six months to work toward reunification.

Under Iowa Code section 232.104(1)(a)(1), the juvenile court must hold a permanency hearing within one year of the child's removal from parental custody. After a permanency hearing, the juvenile court must either return the child to the child's home; continue placement for an additional six months with the goal of family reunification; direct the State to file a petition to terminate parental rights; or order another planned, permanent living arrangement (APPLA). See Iowa Code § 232.104(2). If the juvenile court orders an additional six months to work toward reunification, the court "shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period."

Despite years of readily available psychiatric and family-centered services, the mother has not internalized services designed to improve her parental skills. The family home remains chaotic. In an attempt to control D.B. and compensate for the chaotic home environment, the mother yelled at D.B., threatened him,

isolated him from other children, physically punished him, spanked him with sandals, and slapped him across the face. After removal the mother's incessant, inappropriate conversations with D.B. have perpetuated his fear and anxiety about returning to the home. Unlike D.B.'s siblings who present significant demands for supervision and discipline, D.B.'s penchant for self-harm and disturbing, out-of-control behavior requires the devotion of a skilled care provider.

The mother has made strides toward improving her parenting skills since D.B.'s removal from the home. Those skills, however, remain woefully inadequate to supervise a child with D.B.'s unique mental and behavioral needs. There is insufficient evidence to support a finding that the need for removal would no longer exist at the end of a six-month reunification period. Upon our de novo review, we find clear and convincing evidence supports the juvenile court's finding that D.B. cannot be returned to the home now or at any time in the foreseeable future, and clear and convincing evidence supports the order to change the permanency goal to APPLA. Based on all the facts and circumstances of this case, we find APPLA is in the child's best interest. Accordingly, we affirm.

AFFIRMED.