

**IN THE COURT OF APPEALS OF IOWA**

No. 7-345 / 07-0646  
Filed May 23, 2007

**IN THE INTEREST OF C.N.,  
Minor Child,**

**L.A.R., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the juvenile court's permanency ruling. **AFFIRMED.**

Edward Bull of Bull Law Office, P.C., for appellant mother.

Judy Johnson of Altoona, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor child.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**MAHAN, P.J.**

Lisa appeals her child's permanency ruling. She argues (1) the State failed to make reasonable efforts to reunite her with her child; (2) the child's best interests are not served through placement with his paternal grandparents; (3) the juvenile court erred in refusing to grant her a six-month extension; (4) the juvenile court erred in admitting evidence; and (5) the juvenile court abused its discretion when it failed to review transcripts of prior hearings. We affirm.

**I. Background Facts and Proceedings**

Lisa and Kent are parents of C.N., born in January 1998. Lisa and Kent never married, and Lisa has been C.N.'s primary caregiver throughout his life. C.N. suffers from a mild form of autism. He has also received counseling for sexual abuse that occurred at a daycare center. He has special needs which, if not regulated in a structured environment, cause him to act out violently.

In September 2005 the Iowa Department of Human Services (DHS) issued a founded child abuse report after Lisa failed to provide proper supervision. In March 2006 C.N. was hospitalized for emotional and behavioral problems. C.N. was removed from Lisa's care in mid-March and placed with his paternal grandparents. On May 8, 2006, he was adjudicated a child in need of assistance (CINA). During the summer of 2006, Lisa was receiving treatment for her own mental health issues. Throughout July, she experienced difficulty with her medication and was groggy or fell asleep during visits and while meeting with the service provider. She apparently, however, worked relatively well with DHS and service providers. By Thanksgiving 2006 she was about to receive all-day unsupervised visitation. However, on December 1, 2006, a DHS worker stopped

at her home and found federal marshals raiding the apartment. No charges were filed against Lisa, but federal marshals found she was allowing two fugitives to stay in her apartment. After the December incident, Lisa's visitation was suspended. She now has supervised visitation.

Since his removal, C.N.'s behavior has improved dramatically. He was eight years old and in the first grade at the time of removal. The record shows he was nearly uncontrollable at school. He threw tantrums, overturned desks, and screamed obscenities. He had to be kept in a special education classroom to attend to his behavior. In his paternal grandparents care, he has begun receiving regular medication and attending therapy and school on a regular basis. He has been allowed back into the mainstream classroom for the majority of the time. He shows academic promise and was able to skip the second grade.

At the permanency hearing, DHS recommended C.N. remain in his grandparents' care and the grandparents be allowed to pursue guardianship of C.N. DHS also recommended that visitation with Lisa continue at the department's discretion. Lisa requested six additional months to work toward reunification. The juvenile court determined the State made reasonable efforts toward reunification. It also determined that termination of Lisa's parental rights would not be in C.N.'s best interests. Instead, the court transferred guardianship and custody to the paternal grandparents pursuant to Iowa Code section 232.104(2)(d)(1) (2005). Lisa appeals.

## **II. Standard of Review**

Our review of permanency orders is de novo. *In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005). Our primary concern is the child's best interests. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003).

## **III. Merits**

### **A. Reasonable Efforts**

Lisa argues the State did not make reasonable efforts to reunite her with C.N. She requested more visitation or less restrictive visitation on the record on January 9, 2007. She again addressed the issue with her DHS worker in February 2007. The record indicates DHS made no changes in visitation. According to DHS reports, Lisa seemed unstable. She demonstrated periods of improvement, but between January and March 2007, was distraught over the upcoming permanency hearing and unable to focus or cooperate with the in-home worker. She called workers multiple times. She left panicked telephone messages, only to call back several minutes later sounding calm, then call back hysterical. Her psychotherapist testified that, for the year he had been seeing her, he had seen Lisa stable for no more than two weeks at a time. Her instability adversely affects C.N. For example, she promised to buy him a Nintendo Wii. On his birthday, however, she called DHS workers in a panic because she had not gotten him a present. When Lisa appeared without the Wii, C.N. was extremely distraught and Lisa cried. The in-home worker threatened to end the visit. Later, Lisa told her caseworker the visit went very well.

The record thus makes it clear that increasing C.N.'s visits with Lisa was not in the child's best interests. His condition requires stability, consistency, and

reasonable expectations. Lisa's mental instability and tendency to put herself ahead of C.N.'s best interests did not facilitate extra visitation. We therefore find the district court did not err in determining the State made reasonable efforts toward reunification.

### **B. Grandparent Placement**

Lisa argues C.N.'s paternal grandparents are not a suitable placement for him because (1) they do not approve of her and (2) both will be over seventy years old when C.N. reaches the age of majority. Lisa, however, does not point to any specific evidence showing the grandparents do not support her relationship with C.N. Further, C.N. has made drastic improvements since he began living with his grandparents. DHS workers reported C.N. was attached to the grandparents. They also reported that depriving him of the consistency of structure and medication at the grandparents' home would be disastrous. We must conclude C.N.'s placement with his grandparents is in his best interests. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.") *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.").

### **C. Six-Month Extension**

Lisa argues the juvenile court erred in refusing to grant her six more months to complete reunification. Lisa had a year of services without showing any improvement in the conditions that caused C.N.'s removal. We again find the State made sufficient reasonable efforts toward reunification. C.N. needs

and deserves stability and consistency. He cannot find it with Lisa, and it is unlikely, given her track record, he will be able to find it with her six months from now. See *J.E.*, 723 N.W.2d at 798 (noting a parent's past performance is indicative of the quality of care the parent will provide in the future); *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parents' past performance and motivations."). The district court did not err in refusing to grant Lisa six more months.

#### **D. Evidence Admitted**

Lisa claims the juvenile court erred in admitting the guardian ad litem's (GAL) exhibits A, B, and C. She argues the juvenile court required her to recall her psychotherapist both to lay foundation to enter a letter into evidence and for cross-examination. She alleges the court erred by requiring her to comply with certain rules of evidence, but not requiring the same of the GAL when she entered exhibits A, B, and C. Thus, she argues, her rights to equal protection and due process were violated. We review the trial court's evidentiary rulings for abuse of discretion. *Jensen v. Settler*, 696 N.W.2d 582, 585 (Iowa 2005).

Lisa did not raise her constitutional claims with the juvenile court. We therefore cannot consider them. *K.C.*, 660 N.W.2d at 38. Even if we did consider them, we find this argument to be unpersuasive. Lisa's psychotherapist testified during the first day of trial on March 7, 2007. Lisa's counsel attempted to enter the letter from the psychotherapist on the second day of trial, March 29, 2007, nearly three weeks after the therapist's initial testimony. The letter indicated the therapist's opinion had changed drastically in the interim. We

conclude the juvenile court did not abuse its discretion by requiring Lisa to recall the witness for foundational and cross-examination purposes.

As for exhibits A, B, C, without addressing whether the juvenile court abused its discretion in admitting the documents, we must conclude Lisa experienced no prejudice as a result of the documents. *See In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). Even excluding the documents from our de novo review, there is ample evidence showing Lisa's behavior was unstable, her mental health issues were distracting, her parenting was erratic, and her ability to put her child's needs before her own was nearly nonexistent. *See id.*

#### **E. Failure to Review Transcripts**

Lisa argues the juvenile court abused its discretion when it refused to review transcripts of previous proceedings in the case when a different judge was on the bench. Lisa alleges such a review would have alerted the court that the paternal grandparents wanted custody of C.N. from the outset of the case. She argues this information would have caused the court to determine placement with the grandparents was not in the child's best interests. This argument is unpersuasive. Lisa points to no evidence indicating the grandparents were attempting to sabotage her relationship with her child. She points to no evidence linking the grandparents to her own instability. C.N. was removed due to Lisa's inability to parent him. He remains in his grandparents' custody due not to any ability they may have to better parent him, but due to Lisa's inability to offer a consistently stable environment.

The juvenile court's ruling is affirmed.

**AFFIRMED.**