IN THE COURT OF APPEALS OF IOWA

No. 8-902 / 08-1221
Filed November 13, 2008

IN THE INTEREST OF Z.B.-D., A.D. and T.D.,
Minor Children,

B.L.B.-D., Mother,
Appellant,

T.D., SR., Father of A.D. and T.D.,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld, District Associate Judge.

A mother and father appeal the termination of their parental rights to their children. **AFFIRMED.**

Mary Chicchelly of Seidl & Chicchelly, Cedar Rapids, for appellant mother.

Ronald Ricklefs, Cedar Rapids, for appellant father of A.D. and T.D.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant County Attorney for appellee State.

Lorraine Machacek, Cedar Rapids, for minor children.

Considered by Huitink, P.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

A mother and father appeal the termination of their parental rights to their children. Both challenge the ruling based on a partial loss of the trial transcript. They also contend that clear and convincing evidence does not support the grounds for termination cited by the district court. Finally, the mother argues that the Department of Human Services did not make reasonable efforts to reunite her with her children.

I. Partial Loss of Transcript

In June 2008, extensive flooding in Cedar Rapids, Iowa, resulted in the loss of records at the Linn County Courthouse. Among the lost records were portions of the court reporter's notes relating to this termination hearing, as well as the original exhibits admitted at the hearing.

Following an appeal of the termination ruling, the Iowa Supreme Court ordered the parties to summarize the untranscribed evidence pursuant to Iowa Rule of Appellate Procedure 6.10(3) and to have the record settled or approved by the district court. The parents' attorneys objected to this procedure but complied with it. The district court approved all the summaries and exhibits proffered by the parties and designated those items part of the record on appeal. Also part of the record was the hearing transcript from the first day of the termination hearing.

On appeal, the parents argue that the absence of a complete transcript deprived them of the opportunity for a de novo review of the record and violated due process.

The rule on summaries of evidence states:

> If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be filed with the clerk of the district court and served on appellee within 20 days after the filing of the notice of appeal. Appellee may file with the clerk of the district court and serve on appellant objections or proposed amendments to the statement within 10 days after service of appellant's statement. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included in the record on appeal.

Iowa R. App. P. 6.10(3). Compliance with this rule is not mandatory but "an appellant will not be entitled to a new trial or any other relief on appeal unless the appellant attempts to comply with the rule." *In re T.V.*, 563 N.W.2d 612, 614 (Iowa 1997).

In *T.V.*, a delinquent child's appellate attorney discovered that a tape recording of the delinquency adjudication hearing was inaudible in places and did not include a significant part of the child's testimony. The attorney informed the court he was unable to summarize the missing record because he did not represent the child at the hearing and "had no independent knowledge of the proceedings." *Id.* Additionally, T.V.'s trial attorney attested he did not have sufficient independent recollection of the proceedings to prepare a summary. This left only the juvenile court's trial notes to fill in the gaps. *Id.* at 613. Under these circumstances, the Iowa Supreme Court declined to penalize the appellate attorney for not preparing a summary of the evidence. The court further concluded reversal was necessary because T.V.'s appellate attorney could not determine whether the State presented sufficient evidence of guilt at the adjudicatory hearing. *Id.* at 615.

This case is unlike *T.V.* Here, the parents filed detailed summaries of witness testimony. In addition, the State supplemented those summaries and provided the court with copies of the lost original exhibits. Those summaries, exhibits, and the transcribed portion of the termination hearing create a sufficient record to permit a de novo review of the issues raised by the parents. We proceed to an analysis of that record.[1]

II. Clear and Convincing Evidence

Brenda is the mother of Z.B.-D., born in 1997, A.D., born in 2000, and T.D., born in 2002. Tim is the father of A.D. and T.D. The district court terminated Brenda's parental rights pursuant to Iowa Code section 232.116(1)(f) (2007) (requiring proof of several elements including proof that child cannot be returned to parent's custody) and Tim's parental rights pursuant to Iowa Code section 232.116(1)(f) and (*l*). Both parents maintain that these grounds for termination are not supported by clear and convincing evidence.

We may affirm if we find clear and convincing evidence to support any of the grounds cited by the district court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we conclude termination of both parents' rights was warranted under Iowa Code section 232.116(1)(f).

Brenda and Tim had a lengthy relationship that was marred by domestic violence. Beginning in 2002, the Department of Human Services investigated several complaints that the children were abused. The agency issued confirmed abuse reports, listing Brenda, Tim, and at least one other person as perpetrators. In 2004, the Department attested that two of the children were exposed to

[1] We find it unnecessary to reach the due process issue raised by the parents.

cocaine and alcohol. Tim stated his last usage of cocaine was in March 2004, but he denied using the drug around the children.

The district court adjudicated the three children in need of assistance and placed them in Brenda's custody. The district court subsequently ordered the Department to provide the parents with substance abuse and psychiatric/psychological evaluations and to submit to random urinalysis tests. The court also ordered supervised visitation.

In 2005, the children again tested positive for exposure to cocaine. Brenda denied illegal drug usage but reported that the children were at her father's home where she believed a friend used illegal drugs. Meanwhile, Tim was imprisoned for domestic violence against Brenda and a no-contact order was issued.

In January 2006, the children tested positive a third time for exposure to cocaine. The district court placed custody of the children with the Department for purposes of relative placement. The children were returned to Brenda in July. Two months later, the Department learned that Tim had been released from prison and was living with Brenda in violation of the no-contact order. In September 2006, the children were again removed from Brenda's custody. They remained out of her home from that point forward.

In February, March, May, and June 2007, Tim tested positive for alcohol in his system. He had dilute urine in April and missed some urine tests. In late 2007, he tested positive for cocaine in his system. The Department, which had authorized semi-supervised visitation between the parents and children, returned to supervised visitation.

In February 2008, Tim provided another dilute urine sample. This sample was provided a month before the termination hearing.

At the termination hearing, a parent mentor testified, "[The parents] do well for a while to the point to go back to semi-supervised and then something happens and it just keeps going backward." A care coordinator who supervised visits opined that the children would not benefit from a return to their parents' care, given their "inconsistent parenting and drug testing and actions."

Notwithstanding this evidence, we agree with Brenda that she made serious and significant efforts to comply with Department expectations. She was loving and conscious of the children's safety during the eight-hour weekly visits and the subsequent two-hour weekly visits; she consistently provided clean urine samples; and she followed through with evaluations, therapy, and other services. By the time of the termination hearing, the primary if not sole impediment to reunification was her relationship with Tim. While Brenda testified she had separated from him, she admitted that, following prior separations, she always reunited with him. Because we are required to view the statutory time frames for termination with a sense of urgency, we conclude the latest untested period of separation did not warrant a return of the children to Brenda's custody.

Turning to Tim's argument for reversal, we recognize that he also made some progress toward meeting Department expectations. Specifically, he admitted himself into an inpatient treatment facility and agreed to separate from Brenda. However, his history of relapses and his failure to move beyond semi-supervised visits made reunification untenable. At the time of the termination hearing, the children could not be returned to his custody.

III. Reasonable Efforts

Brenda maintains the Department failed to make reasonable efforts to reunify her with her children. She contends the Department insisted on pursuing termination despite her willingness to have Tim move out of the family home, and the Department refused to increase visitation time and decrease the level of supervision during the visits.

The Department has an obligation to make reasonable efforts towards reunification. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The Department did so for a period of four years, providing substance abuse services, parent skills training, visits, a trial home placement, and other services. With respect to visits, the Department afforded Brenda and Tim a day per week with the children and eventually moved to semi-supervised visits. The length of the visits was reduced and the level of supervision was increased only after Tim tested positive for cocaine. We conclude the agency satisfied its mandate.

IV. Disposition

We affirm the termination of Brenda's parental rights to Z.B.-D., A.D., and T.D and affirm the termination of Tim's parental rights to A.D. and T.D.

AFFIRMED.