IN THE COURT OF APPEALS OF IOWA

No. 9-618 / 09-0684
Filed August 19, 2009

IN THE INTEREST OF S.K. and A.K.,
Minor Children,

L.L.K., Mother,
Appellant.

Appeal from the Iowa District Court for Tama County, Angie Wilson, District Associate Judge.

A mother appeals the denial of her application to modify the permanency goal for two of her children. **AFFIRMED.**

Allan M. Richards, Tama, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

John Daufeldt of Daufeldt Law Firm, P.L.C., Conroy, for intervenor.

John Livingston, Gladbrook, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Lori, the mother of four children, two of whom are at issue in these proceedings, appeals from the juvenile court's denial of her application to modify the permanency goal for her two younger children. She contends there has been a material and substantial change in circumstances warranting modification and modification is in the children's best interests. On de novo review, we affirm.

I. Background Facts and Proceedings.

The children were removed from the mother's care in 2006. They were placed with Chad, Lori's former husband and the father of the children's older half-siblings, where they have remained throughout these proceedings. The Sac and Fox Tribe of the Mississippi in Iowa ("tribe") sought transfer of jurisdiction to tribal court in 2006. The request was denied. Following a November 2007 review and permanency hearing, the court found compelling reasons not to terminate the parents' parental rights, "including that the children are bonded, their ages, and that their mother continues to cooperate with services." The court further found convincing evidence that termination was not in the children's best interest, but that, despite services provided to the family, they could not be returned home at that time. The court ordered the permanency goal changed from reunification with a parent to another planned permanent living arrangement for long-term placement with Chad. It also granted concurrent jurisdiction in order that guardianship of the children could be established.

In a March 2008 permanency review order, the court found reasonable efforts had been made to finalize the permanency plan and the goal remained

another planned permanent living arrangement for long-term placement with Chad. In April of 2008 the tribe again sought transfer of jurisdiction. The court granted the request as to Lori's older two children, whose father is Chad. It denied the tribe's request as to the younger two children, who are the children at issue in this appeal.

In January of 2009, Lori filed her motion to modify the permanency goal, requesting that it be changed from another planned permanent living arrangement to reunification with a parent. The court granted Chad's subsequent motion to intervene in the proceedings. A contested hearing on Lori's motion was held in February. The court issued its order denying the motion at the end of March. The court found Lori had employment, lived in an apartment appropriate for the children, had made "tremendous progress in most aspects of her case plan," and only had "stability as the remaining obstacle" in this matter. The court further found the children were happy and healthy in Chad's care, that he was bonded with them and committed to raising them in a loving and supportive home. The court expressed some concern about the ability of Lori and Chad to communicate about the children because of her continuing animosity towards him. It also expressed concern about the future effects that changing the permanency goal might have. The children could be separated from their older half-siblings. They might not be able to participate as freely in tribal activities as they do now. They could be moved to a different school, which would disrupt their lives and their relationship with their half-siblings.

Considering the request to change the permanency goal back to reunification, the court concluded it had no authority "for what would substantively be 'starting over' the one year timeframe for Lori to correct her still existing parenting defects." It further concluded, "Even if the court were to modify the permanency goal, the children could not safely be returned to the care of their mother at this time." It added:

> All evidence indicates the children are thriving in their current placement. The case plan provides for a continued relationship between Lori and the children. Both in-home providers testified it would not be in the best interest of the children to move them from their current placement as it gives them stability. The court's main priority in determining whether to modify the permanency goal is to determine what is in the children's best interest. At this time, the court cannot find that modification is in the children's best interest. The court would, however, like to see increased visitation between Lori and the children if service providers feel the increase is warranted.

After the court denied her request to modify the permanency goal, Lori filed a motion to reconsider, asking the court to consider certain facts and to reopen the record to take additional evidence on the child abuse investigation concerning "the foster parent" and "the young girl." The court denied the motion, noting it had considered the facts asserted by the mother and was aware of the child abuse investigation. This appeal followed.

II. Scope and Standards of Review.

Permanency orders are reviewed de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review both the facts and the law and adjudicate rights anew on the issues properly presented. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's findings, but are not bound by them. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). A party seeking a modification of a prior

order must show that circumstances have so materially and substantially changed that a modification is in the best interest of the child. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). There is a rebuttable presumption that a child's best interests are served by parental custody. *Id.* However, "our responsibility in a modification of a permanency order is to look solely at the best interests of the children for whom the permanency order was previously entered." *In re A.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). "Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs." *Id.*

III. Merits.

A. Jurisdiction. The State first contends we lack jurisdiction to consider the appeal because the notice of appeal was untimely. It argues the motion to reconsider did not fall within the ambit of a motion to amend or enlarge findings, and thus did not toll the fifteen-day deadline for filing an appeal. *See* Iowa R. Civ. P. 1.904(2) (motion to amend or enlarge); *see generally* Iowa R. App. P. 6.101(1) (2009) (fifteen-day deadline for appeals). From our review of the record, we determine the motion to reconsider was "in substance" a motion to amend or enlarge findings, in addition to a request to reopen the record. *See Beck v. Fleener*, 376 N.W.2d 594, 596 (Iowa 1985); *accord Woody v. Machin*, 380 N.W.2d 727, 729 (Iowa 1986). Therefore the appeal was timely filed and we have jurisdiction.

B. Modification. We acknowledge that Lori is a caring and loving mother who has "made tremendous progress in most aspects of her case plan." It is

clear there is a strong parent-child bond that militates against termination of her parental rights. We cannot find, however, that Lori has shown that "the circumstances have so materially and substantially changed that a modification is in the best interest of the child[ren]." Since the time for patience with her as she seeks to remedy her parenting deficiencies has long passed, our focus turns to the children's needs and interests. *See In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Under Iowa Code section 232.104 (2009), once the State has demonstrated that termination is not in the children's best interests, appropriate services were offered to the family, and the children cannot be returned home, it is proper for the court to order "another planned permanent living arrangement" for the children. The court did so in November of 2007 in this case. It affirmed that placement in a review order in March of 2008. It affirmed that placement again in the March 2009 order at issue here. Considering the immediate and long-term best interests of the two children, their close relationship to their half-siblings, their exposure to and participation in tribal customs and ceremonies, and their need for stability and security, we affirm the juvenile court's decision not to modify the goal of the permanency order. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (noting children's "safety and the need for a permanent home" are "the primary concerns" in placing children); *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994) (noting a preference to keep siblings and step-siblings together); *In re J.W.D.*, 458 N.W.2d 8, 10 (Iowa Ct. App. 1990) (specifying need to consider both immediate and long-term best interests). We also considered that the order provided for continued

visitation for Lori, which we consider important in maintaining the strong bond between her and the children.

AFFIRMED.