

IN THE COURT OF APPEALS OF IOWA

No. 9-874 / 09-1378
Filed November 12, 2009

**IN THE INTEREST OF S.R.W.,
Minor Child,**

**R.M.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Stephen Gerard, III, District Associate Judge.

A mother appeals from the order terminating of her parental rights.

AFFIRMED.

Dai Gwilliam of Stein, Moore, Egerton & Weideman, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Bryan Tingle, County Attorney, and Kristin L. Parks, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Vaitheswaran and Danilson, JJ.

SACKETT, C.J.,

Rose, the mother of Sylvia, appeals from the order terminating her parental rights. She contends the Department of Human Services “did not provide timely rehabilitative services” and did not make reasonable efforts to reunify mother and child. We affirm.

Background Facts and Proceedings. Sylvia’s parents married in 2005 and she was born in March of 2006. The family came to the attention of the department and the courts in November of 2006 after Rose assaulted her husband while he was holding Sylvia. Sylvia and her father moved in with his mother and the court placed the child in her grandmother’s custody. The court found the child in need of assistance in early 2007. It ordered psychiatric/psychological evaluations of the parents, to be paid for by the State. Rose pleaded guilty to domestic abuse assault. A no contact order was issued to prevent Rose from contact with Sylvia’s father, except through a written journal established by the court. Rose had supervised visitation at the department. Sylvia’s father moved back into the family apartment in April of 2007. Visitation with him progressed to semi-supervised and then overnight. Based on a successful trial home placement, the court returned the child to his custody in September. Meanwhile, there were repeated violations of the no contact order that led to increasing periods in jail for Rose and termination of her visitation with Sylvia. When she was released from a 180-day jail term she assaulted her mother and was returned to custody.

Following her release in July of 2008, Rose contacted the department seeking visitation. In a meeting between a department worker, Rose, Rose's attorney, and a representative of the Builders of Hope program, Rose became upset and struck the department worker, leading to charges of assault causing injury. Visitation did not resume.

In the September of 2007 order returning the child to the father's custody, the juvenile court granted concurrent jurisdiction to the district court to enter orders concerning child custody in the action to dissolve the parties' marriage. In December of 2008, the parents' marriage was dissolved and the court placed the child in the father's sole custody, finding joint legal custody was not in the child's interests. The court allowed for the concurrent child-in-need-of-assistance proceedings to resolve the issue of when, or if, visitation should resume with the mother. Sylvia's father has since remarried and his current wife desires to adopt the child.

In 2009, the State petitioned to terminate Rose's parental rights. Following a contested hearing in June, the court entered an order in late August terminating Rose's parental rights under Iowa Code sections 232.116(1)(h) and (k) (2009).

Scope and Standards of Review. Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. See Iowa Code § 232.117. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

Merits. Rose contends the department did not provide timely rehabilitative services. See Iowa Code § 232.67 (2007). She also contends the department did not make reasonable efforts to reunite her with her child. See *id.* § 232.102(7), (10). Because we see these two contentions as intertwined, or different facets of the same claim, we address them together.

Iowa Code section 232.67 states the legislature's specific objective underlying child abuse reporting, investigation, and rehabilitation, which is "to provide the greatest possible protection to victims or potential victims of abuse." See *McCracken v. Iowa Dep't of Human Servs.*, 595 N.W.2d 779, 784 (Iowa 1999). Included in the means for reaching this objective is "providing rehabilitative services, where appropriate and whenever possible to abused children and their families which will stabilize the home environment so that the family can remain intact without further danger to the child." Iowa Code

§ 232.37. Neither the legislature nor the courts have defined the term “rehabilitative services,” but we believe the services fall within the “reasonable efforts” set forth in section 232.102. Section 232.67 does not set forth a requirement, but is the legislature’s statement of intent. Section 232.102 adds a more-detailed description of the efforts the department should undertake to keep a family together or to make reunification possible. See *id.* § 232.102(10)(a) (defining “reasonable efforts” as “the efforts made to preserve and unify a family prior to the out-of-home placement, . . . to eliminate the need for removal, . . . or make it possible for the child to safely return to the family’s home”).

Rose argues she filed an “Application for Services” in January of 2008 that stated it was “unreasonable for someone suffering from a serious mental illness to be solely responsible for addressing her own mental health needs.” She complains that the court did not arrange for services or arrange for payment of services, but merely “encourage[d] Rose to obtain psychiatric care and to address her psych issues in order to reinstate visitation.” She recounts her own enrollment in the Builders of Hope and STEPPS¹ programs to address some of her needs. She also participated in treatment at the Community Mental Health Center for Mid-Eastern Iowa. She further argues the department made no further efforts to reunify her with her daughter after the petition to terminate her parental rights was filed in March of 2009.

¹ STEPPS is an acronym for Systems Training for Emotional Predictability and Problem Solving, a cognitive-behavioral systems-based group treatment in Iowa City for persons with borderline personality disorder.

This case is particularly unfortunate because Rose's family's involvement with the department during her childhood, based on allegations of physical and sexual abuse by her father, left her with a deep distrust of the department. She blames the department for her father's suicide and for how she believes it mistreated her mother. During the case before us, Rose had trouble working with department staff and responded poorly to the department's attempts to work with her. She wrote a letter to the court asking if there was some way she didn't have to work with the department.

From our review of the record we find clear and convincing evidence that the department made reasonable efforts to reunify the family, including rehabilitative services for the mother. From before the initiation of this case, the mother was treated for and received medication for mental health issues, including major depressive disorder, generalized anxiety disorder, and emotional intensity disorder. Although she vigorously resisted releasing her mental health records to the department, she eventually signed releases for access to her records. Although consistent therapy, other than medication, was not possible because of the mother's repeated violations of the no contact order that resulted in repeated periods in jail, the record shows the mother did receive mental health therapy during some periods when she was not in jail and received medication even while in jail. In 2009 she participated in the STEPPS program and met regularly with a therapist. The mother refused or did not take advantage of services provided by the department, other than supervised visitation.

Although Rose's second issue is phrased as a challenge to the department's "reasonable efforts" toward reunification, the argument reveals the claim is that clear and convincing evidence does not support a finding that reasonable efforts were made, as required in the statutory grounds for termination. She argues the sections cited by the court, 232.116(1)(h)(4) and 232.116(1)(k)(1) (2009) "both implicate the requirement that the Department make reasonable effort towards reunification under [section] 232.102." "[T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). "Instead, the scope of the efforts by the [department] to reunify parent and child after removal impacts the burden of proving those elements of termination [that] require reunification efforts." *Id.* Reasonable efforts are part of the State's ultimate proof a child cannot be safely returned to the care of a parent. *Id.*

In considering Rose's first claim we found clear and convincing evidence the department made reasonable efforts to reunify the family, including rehabilitative services. Both Sylvia's mother and father were offered services. Her father took advantage of the services and progressed through semi-supervised visitation and a trial home placement to have Sylvia returned to his custody. Rose resisted the department's efforts to help her and also was repeatedly unavailable to take advantage of services because she spent repeated times in jail for more than sixty violations of the no contact order. At the time of the termination hearing, she was not in a position to have Sylvia returned to her care as provided in section 232.102 despite the department's efforts.

Clear and convincing evidence supports termination of Rose's parental rights under section 232.116(1)(h). Therefore we need not address her evidentiary challenge relating to section 232.116(1)(k). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding we only need to find grounds to terminate parental rights under one of the statutory grounds cited by the court in order to affirm).

AFFIRMED.