IN THE COURT OF APPEALS OF IOWA

No. 9-992 / 09-1547
Filed December 17, 2009

IN THE INTEREST OF J.S. and J.S.,
Minor Children,

L.J.S., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental rights to two of her children. **AFFIRMED.**

William A. Lansing of William A. Lansing, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee.

Natalia Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for father.

Sarah Stork Meyer, Dubuque, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., Danilson, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

The appellant is the mother of nine-year-old and six-year-old sons ("the children"). She appeals from an October 2009 juvenile court order terminating her parental rights to these children. (The boys' father could not be located and served with notice of the termination proceedings, and his rights are thus not at issue in this appeal.) We affirm.

The Iowa Department of Human Services (DHS) became involved with this family in August 2008 when the mother struck and injured the children's older sister and failed to supervise the children.[1] The children were removed from the mother. In August 2008 the juvenile court ordered numerous services for the mother and family.[2] The children were adjudicated children in need of assistance (CINA) in October 2008.

Following a November 2008 disposition hearing the court ordered the mother to participate in and cooperate with a myriad of services designed to address her numerous problems. Petitions for termination of the mother's parental rights to the children were eventually filed in August 2009. Following a hearing held on two days, in October 2009 the juvenile court filed detailed and thorough findings of fact, conclusions of law, and an order terminating the mother's parental rights to the children. As cogently found by the court, in a finding fully supported by the record: "Since the outset of the case, there has

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[1] The mother has been involved with the DHS intermittently since 1997, with nine founded reports of neglect or abuse of one or more of her children.

[2] The mother has a lengthy history of substance abuse; a lengthy history of mental problems, some of which are related to her substance abuse; a history of a lack of stable housing; and a history of lack of employment and failure or refusal to seek employment.

been little progress in any of the areas of concern identified by the [DHS]."[3] The mother appeals.

> We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Although not stated as an issue, the mother claims that the time frame allowed for filing her petition on appeal required her to file it prior to the receipt and opportunity to review the transcript of the termination hearing, and that such was "in violation of appellant's due process right to appeal."[4] The substance of the mother's claim was dealt with and rejected in *In re R.K.*, 649 N.W.2d 18, 20-22 (Iowa Ct. App. 2002).[5,6] Based on the holding in *R.K.*, we reject this claim.

The mother also claims that she, and the children, "were denied reasonable effort services by the DHS's failure to effect mental health commitment of the mother."

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[3] The evidence shows that despite encouragement and assistance, including repeated requests to participate in ordered services, having appointments made for her, and having transportation provided to her to assist in accessing and acquiring services, the mother largely failed and refused to participate in substance abuse evaluation, mental health therapy, and securing employment.

[4] We note that there is no federal or Iowa constitutional right to appeal. *See State v. Hinners*, 471 N.W.2d 841, 843 (Iowa 1991).

[5] The attorney representing the mother in this appeal also represented her at the termination hearing.

[6] As potentially applicable to the mother's failure to cite this case, *see* Iowa Rule of Professional Conduct 32:3.3(*a*)(2).

As a preliminary matter, we note that the mother's claim appears to incorrectly assume that the DHS has the authority "to effect [a] mental health commitment." *See* Iowa Code §§ 229.12, .13 (2009) (providing that the court makes a commitment decision after a hearing). Further, the mother now somewhat strangely claims that the DHS failed by not taking adversary steps to force her to submit to services that she repeatedly and thoroughly rejected. We, however, pass these concerns and address the question of error preservation raised by the State.

While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Although a parent suffering from mental illness suffers a disability and may need special accommodations, this issue should be raised at the removal hearing or at a review hearing and it is too late to challenge the service plan at the termination hearing. *In L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *J.L.W.*, 570 N.W.2d at 781.

In closing remarks at the conclusion of the termination hearing, the mother, through counsel, complained that "a mental health commitment" should have been sought. The juvenile court found "this argument to be untimely," and

declined to "address whether [the mother] would have even met the statutory criteria for involuntary hospitalization under either the substance abuse or mental health chapters." The State asserts that the mother's claim was not preserved, not being raised prior to the termination hearing. The mother does not claim that she raised the present issue at any time before the termination hearing, and our review of the record discloses no assertion of such inadequate services or efforts before that hearing. We conclude error is not preserved on this issue and do not further address it.

AFFIRMED.