



In re C.J.W.

2002 | Cited 0 times | Court of Appeals of Iowa | May 15, 2002

The mother appeals a district court order terminating her parental rights to two children. **AFFIRMED.**

A mother appeals a district court order terminating her parental rights to two children. We affirm.

I. Background Facts and Proceedings

Tonia is the mother of Chyna, born in 1998, and Jacob, born in 2000. The childrens' fathers are not parties to this appeal.

When Chyna was born, she tested positive for exposure to illegal drugs. The Department of Human Services removed her from Tonia's care but returned her when it appeared Tonia was drug-free.

Jacob was born a year and a half later. He tested positive for methamphetamine exposure. The Department immediately had both children removed and placed in foster care. Tonia, who was already on probation as a result of her past drug use, faced revocation of her probation.

The Department initiated services for Tonia. She successfully completed two drug treatment programs, passed drug tests, obtained a general education degree, found a job, and actively participated in visitation with her children. However, after three months on her own, Tonia returned to drugs.

On the date of a scheduled hearing, Tonia advised a Department worker of her relapse and indicated she would consent to termination of her parental rights. On the same day, the juvenile court issued a "permanency order" that (1) continued the children in foster care; (2) scheduled a "permanency hearing" in six months; and (3) ordered the State to proceed with a termination action.

The State initiated termination proceedings. Meanwhile, authorities revoked Tonia's probation and imprisoned her at the Mitchellville Correctional Facility.

At the termination hearing, Tonia conceded she had earlier consented to termination of her rights but stated she wished to resume care of her children following her release from prison. The juvenile court terminated her parental rights pursuant to Iowa Code section 232.116 (1)(c) (1999) (physical abuse or neglect). On appeal, Tonia contends (1) the Department did not make reasonable efforts to reunite her with her children and (2) the permanency order violated due process. Our review of these



issues is de novo. Iowa R. App. P. 6.4.

II. Reasonable Efforts

The State preliminarily submits that Tonia did not preserve error on her challenge to the State's efforts to reunify her family, because she did not object to departmental services at the time they were rendered. We agree in part. Tonia challenges (1) the Department's failure to provide her transportation and employment assistance and (2) the sufficiency of the evidence to support the "reasonable efforts" element. She may not now challenge the Department's failure to provide services that she did not request below. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). As she did not ask for transportation or employment assistance, we will not consider that issue. However, we will consider her sufficiency of the evidence challenge because that challenge may be raised even absent an objection below. *Id.* at 492-3; *In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982).

Tonia maintains that the Department abandoned its reunification efforts after she admitted to a relapse. We agree with this proposition but disagree that the Department's failure to continue services amounted to a violation of its reasonable efforts mandate. See Iowa Code § 232.102(7) and (10)(a). *In re C.B.*, 611 N.W.2d at 492-93.

The Department afforded Tonia several services designed to address her drug addiction and facilitate a return of her children. The Department only curtailed these services after it became apparent that Tonia did not wish to work toward reunification. A social worker testified that Tonia contacted the Department and told another worker "that she knew she needed to let go of the children for their best interest so they could have a better life." ¹ Tonia later scheduled a "good-bye visit" with the children. At that time, she turned over the childrens' clothes and toys to the foster parents.

While Tonia maintains her consent to termination was essentially coerced by the Department, the only evidence of such coercion was her testimony that the social worker gave her the impression her rights would be terminated. We are not convinced the conveyance of this impression amounts to coercion. Tonia had just advised the worker she relapsed. It was reasonable to expect that the worker would tell her she faced termination as a result of her relapse. Accordingly, we reject Tonia's sufficiency of the evidence challenge to the Department's reunification efforts.

III. Challenge to Permanency Order

Tonia next raises what she styles as a due process challenge to the permanency order. She concedes her attorney failed to object to the order and, accordingly, has not preserved error on this claim. Therefore, she raises the claim under an ineffective assistance of counsel rubric.

Our highest court has permitted ineffective assistance of counsel claims in termination proceedings. See *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988). The court has generally applied the same standard

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applicable in criminal proceedings: whether counsel's performance is deficient and whether actual prejudice resulted. In re A.R.S., 480 N.W.2d 888, 891 (Iowa 1992).

Tonia contends a competent attorney would have objected to the permanency order to the extent it required continuation of foster care and the institution of termination proceedings, remedies she maintains are inconsistent. See Iowa Code § 232.104(2) (authorizing foster care or commencement of termination proceedings). We disagree. The order merely makes provision for both contingencies in light of Tonia's admission of drug use and her consent to termination. Therefore, we are not convinced the failure of Tonia's attorney to object to the order amounted to deficient performance.

The district court order terminating Tonia's parental rights to Chyna and Jacob is affirmed.

AFFIRMED.

1. Tonia maintains the notes of this conversation are not in evidence. However, the social worker testified to this conversation without objection. Therefore, it is immaterial whether the underlying report is in evidence.

