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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No 5-122 / 94-1631

IN THE INTEREST OF R.H. AND L.H.,
Minor Children,

B.W., Mother,

Appellant.

R.H., Father,

Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

Mother and father appeal the district court's order terminating their parental rights over their minor children. **AFFIRMED ON BOTH APPEALS.**

Robert K. Leyshon of Wehr, Berger, Lane & Stevens, Davenport, for appellant-mother.

Stephen P. Wing of Dwyer, Wing, Zamora, Taylor & Walters, Davenport, for appellant-father.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

James L. Ottesen, Davenport, guardian ad litem for minor children.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

Billee and Rodney are the parents of R.H., born May 16, 1988, and L.H., born September 14, 1989. Billee is also the mother of three half-siblings of R.H. and L.H.; however, only R.H. and L.H. are directly involved in this action.

In February 1991, the State filed a petition alleging R.H. and L.H. were children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c). The petition alleged that Rodney had sexually abused two of the half-siblings. R.H. and L.H. were removed from Billee's care on March 14, 1991 when the State discovered Rodney was baby-sitting them despite a no contact order.

Rodney pled guilty to second-degree sexual abuse of one of the half-siblings. He was sentenced to twenty-five years imprisonment

In June 1991, the children were adjudicated CINA pursuant to section 232.2(6)(c). The court found Billee had inappropriately scolded and disbelieved the half-siblings about the sexual abuse by Rodney. It further found Billee "has either tacitly or expressly encouraged them [R.H. and L.H.] to be critical of [the half siblings] for the 'lies.'" The court also questioned Billee's ability to protect the children from future abuse.

After a dispositional hearing in September 1991 the court found that the children could not be returned to Billee and ordered them to remain in the custody of the Department of Human Services (DHS) for placement in foster care.

In a permanency order filed in January 1994, the court noted DHS was changing the case permanency plan to recommend termination of Billee's and Rodney's parental rights over R.H. and L.H.. R.H. and L.H. had remained continuously in foster care since their removal from Billee in March 1991. Finding that Billee had not resolved her "personal instability" or maintained consistent parenting of the children, the court approved the plan.

In May 1994, the guardian ad litem filed a petition for termination of parental rights. At the termination hearing in August 1994, DHS social worker Wendy Rickman and Nancy

Freece, a case worker at Bethany Home Services, testified. In addition, the court received into evidence the case permanency plans prepared by Rickman and case reports authored by Freece. This evidence showed Billee had made no progress in the case permanency plan's goals that she achieve stable housing and terminate relationships that are a danger to herself and her children Billee had been provided services aimed at helping her find housing. Although Rickman did not think Billee's failure to find stable housing was due purely to finances, she did acknowledge Billee could not receive ADC benefits until her children were returned to her and the children could not be returned to her until she had stable housing. Both workers stated no services had been offered Rodney.

Billee testified she was presently living with a male friend in his trailer. At the time of trial, she was pregnant and unable to work. Rodney was not present at the hearing.

The court found Billee "never committed to participation in the supportive or rehabilitative services to make a permanent change in her living situation so that she could care for her children." It concluded there was a high risk of abuse or neglect of the children if they were returned to Billee. Therefore, the court terminated Billee's parental rights pursuant to Iowa Code sections 232.116(1)(c), 232.116(1)(e) and 232.117. Rodney's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(e) and 232.117. Billee and Rodney appeal.

Billee and Rodney both argue the petition for termination was inadequate because it did not meet the requirements of Iowa Code section 232 111 (1993). The parents contend they were not given notice of the grounds for termination; therefore, the termination order violated their rights to due process.

In addition, Rodney contends the court's order was violative of equal protection because it was based on the mother's failure to respond to services and no services were offered to him. He further asserts the termination of his parental rights constitutes cruel and unusual punishment and violates his due process rights Finally, Rodney argues the

termination order violated the Double Jeopardy Clause because he was punished twice for the offense of sexual abuse--by being sentenced to prison and by having his parental rights terminated.

Billee further argues that the court's findings were not supported by substantial evidence. She asserts there is no evidence to support the conclusion that the children would still be subjected to abuse or further adjudicatory harm if returned to her. Billee contends that none of the men she has lived with since her children were removed pose a threat to her children of sexual or physical abuse. Billie also argues the court impermissibly based the termination of her parental rights on financial factors that prevented her from obtaining stable housing.

I. Scope of review. Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

II Mother's claims. Billee presents two issues on appeal. First, she contends the petition for termination of parental rights fails to meet the statutory requirements and a termination based on this petition results in a violation of due process. Second, she claims there was insufficient evidence to support a termination of her parental rights.

Billee failed to raise her arguments regarding the petition at the trial level. Billee fails to state in her brief pursuant to Iowa Rule of Appellate Procedure 14(a)(5) where she preserved this issue for review The record does not contain any mention of this issue being brought up before the trial court for its consideration. Matters not raised at the trial level, including constitutional issues, cannot be asserted for the first time on appeal State v Lyon, 223 N W.2d 193, 194 (Iowa 1974); In re C.D., 508 N.W.2d 97, 100 (Iowa App. 1993). As a result, we deem the issue waived and decline to address it on appeal.

Billee also contends there was insufficient evidence to support a termination of her parental rights. We disagree.

Billee's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(c) and (e) (1993) Section 232.116(1)(c) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The court has previously adjudicated the child to be a child in need of assistance after findng the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Section 232.116(1)(e) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102

Billee contends the evidence does not allow termination under either section.

Since the CINA adjudication, Billee has received family preservation services, parenting skill instruction and homemaker services, sexual abuse counseling for mothers of abused children, psychological counseling to develop independent and assertiveness skills due to her negative relationships with various males, housing assistance, educational assistance, and visitation services She has obtained her own living situations with assistance for brief periods, but has repeatedly resumed living with various males who have criminal records or continually kick her out after arguments. As of the time of the termination hearing, Billee was pregnant with one man's child while living off and on with two other different men. Counselors reported "Billee failed at her attempts to become less dependent on males."

The counselors also reported Billee had shown little motivation to help the children address the abuse or to take responsibility for the children's safety. In their court report, they stated,

> According to Sexual Abuse Treatment Program reports, Billee displayed a passive-aggressive attitude toward treatment and showed little motivation or progress in taking responsibility for her children's safety. Her attendance was sporadic and inconsistent. . . In a November 30, 1992 letter from SATP, the therapist indicated that Billee had made no progress in therapy and was often angry and defensive when her behavior was confronted. In addition, Billee also refused to accept responsibility for her problems and felt entitled to be provided housing, a job and her children returned to her. Billee identified no problems, emotional needs or areas to work on. Bille was also noted to frequently state that she only attended her SATP appointments "because I have to."

The DHS caseworker and Bethany Home foster care worker both testified in support of the termination of the parents' rights to R.H. and L.H. The guardian ad litem also supported the termination petition, as did the CASA worker.

We determine there was sufficient evidence to support the termination of Billee's parental rights Billee shows no signs of being able to provide the children with a stable and nurturing environment, despite three and one-half years of services. She continues to be involved in relationships with males which either could put the children at risk if returned to her care or would create a instable environment for the children.

These children have been in foster care since March 1991. Our supreme court has warned that "patience on behalf of the parent can quickly translate into intolerable hardship for the children." In re R.J., 426 N.W.2d 630, 636 (Iowa 1989). A child should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). A child should not be forced to await the maturity of their natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983)

We affirm the termination of Billee's parental rights.

III Father's claims. Rodney presents two issues on appeal. First, he contends the petition for termination of parental rights fails to meet the statutory requirements and a termination based on this petition results in a violation of due process. Second, Rodney contends his equal protection, due process, and double jeopardy rights were violated by the termination of his rights.

Rodney failed to raise either of the issues he asserts at the trial level. Rodney fails to state in his brief pursuant to Iowa Rule of Appellate Procedure 14(a)(5) where he preserved either of the issues for review. The record does not contain any mention of the issues being brought up before the trial court for its consideration. Matters not raised at the trial level, including constitutional issues, cannot be asserted for the first time on appeal. Lyon, 223 N.W.2d at 194; In re C.D., 508 N.W.2d at 100. As a result, we deem both issues waived and decline to address them on appeal. We affirm the termination of Rodney's parental rights.

AFFIRMED ON BOTH APPEALS.