IN THE COURT OF APPEALS OF IOWA

No. 1-054 / 00-1057
Filed February 28, 2001

FILED
FEB 2 8 2001
CLERK SUPREME COURT

IN THE INTEREST OF G.G.,
Minor Child,

N.G., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

The father of a minor child appeals a district court ruling terminating his parental rights. **AFFIRMED.**

Christopher A. Kragnes, Sr., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jennifer G. Navis, Assistant County Attorney, for appellee.

Nicole C. Garbis-Nolan, Des Moines, guardian ad litem for minor child.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

PER CURIAM

A father appeals the decision of the juvenile court which terminated his parental rights to his minor child. He claims the State did not present sufficient evidence to justify termination of his parental rights. He also claims the court should not have terminated his parental rights because the child is in the care of a relative and termination is not in the child's best interests. We affirm on appeal.

Nick and April are the parents of Givanna, born in January 1998. The parents' relationship involved domestic violence. The parents were also involved in the use of illegal drugs, particularly methamphetamine.

The family came to the attention of the Department of Human Services (DHS) in April 1999, when Nick injured Givanna's half-sister by throwing her against a bed, causing a laceration on her head which required stitches. DHS issued a founded report of physical abuse against Nick. April moved with the children to a shelter. A no-contact order was entered prohibiting Nick from having contact with April or the children.

In June 1999, April reunited with Nick and moved back into his home. The children were removed from the home and placed in the care of the mother's sister. The juvenile court adjudicated Givanna to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2). The case permanency plan recommended Nick complete a domestic abuse class, attend individual therapy, obtain a substance abuse evaluation, and comply with drug screens. Nick took no steps to comply with these requirements.

In August 1999, Nick was arrested for domestic assault in an incident involving April. Due to his inconsistent attendance at supervised visitation, visits

were suspended. Nick was permitted to telephone Givanna, but did not take advantage of this opportunity. In mid-September 1999, Nick was placed in jail. He was charged with child endangerment and assault causing injury due to the incident in April 1999. He also faced charges of possession of a controlled substance and domestic abuse.

Nick was apparently convicted on some or all of these charges; the record is not clear on his convictions. He was in jail from mid-September 1999 until late February 2000, when he was released to a correctional facility. He obtained employment and had a substance abuse evaluation. He signed up for a domestic abuse class. Nick had one supervised visit with Givanna after he was released from jail.

In March 2000, the State filed a petition to terminate the parental rights of Nick and April to Givanna. The juvenile court terminated Nick's parental rights under section 232.116(1)(g). The court found Nick had an anger problem. In addition, the court also found Nick lacked the motivation to change and become a good parent. April's parental rights were also terminated. Nick appealed.

I. Scope of Review

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Sufficiency of the Evidence

Nick asserts the State did not present sufficient evidence to warrant termination of his parental rights.[1] He claims the State did not show Givanna could not be returned to his care at the present time. He states he began to take an active role in Givanna's life after he was released from jail.

A court must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1996). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). At some point, the rights and needs of the children rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

There is clear and convincing evidence in the record to show Givanna could not be safely returned to Nick's care at the present time or in the near future. Nick did not cooperate with services before he was placed in jail. His own conduct placed him in jail from mid-September 1999 until late February 2000, where he was unable to meet Givanna's needs. By the time of the termination hearing, Nick had only one visit with his daughter, and he was just beginning the services he should have completed by that time. Givanna should

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[1] In Nick's brief he raises some arguments concerning Iowa Code sections 232.116(1)(b) and (d). The juvenile court terminated his parental rights only under section 232.116(1)(g), and we do not need to address his arguments concerning these other code sections.

not be required to wait longer for Nick to become a responsible parent. Nick's parental rights were properly terminated under section 232.116(1)(g).

III. Court's Discretion

Nick asserts the juvenile court should have exercised its discretion under section 232.116(3)(a) to refuse to terminate his parental rights because Givanna is in the care of the maternal aunt. Under this section, the court need not terminate the relationship between the parent and the child if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a).

We question whether this issue has been preserved for our review. The termination order did not address any issues raised by section 232.116(3). Nick did not file a motion pursuant to Iowa Rule of Civil Procedure 179(b). An issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). By failing to file a rule 179(b) motion in juvenile court, Nick waived this issue. *See In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994). We conclude this issue has not been preserved.

IV. Best Interests

Nick also argues termination of his parental rights is not in Givanna's best interests. He states he is taking steps to make his life better.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical,

mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

We find termination of Nick's parental rights is in Givanna's best interests. Nick's lack of participation in services shows a lack of commitment to his child. Nick has not addressed the problems which led to Givanna's adjudication as a child in need of assistance. Nick's aggressive behavior led to the injury of Givanna's half-sister. For all of these reasons, Nick's parental rights were properly terminated.

We affirm the decision of the juvenile court.

AFFIRMED.