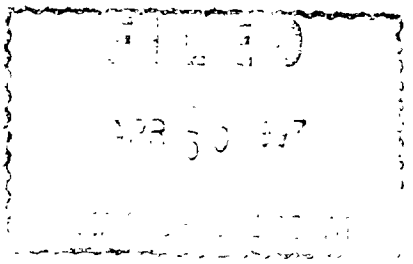
IN THE COURT OF APPEALS OF IOWA

No. 7-186 / 96-1636

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

S.J.B., Mother,
Appellant,

A.S., Father,
Appellant.



Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Court Judge.

A mother and father appeal from the termination of their parental rights. **AFFIRMED.**

Ronald A. Baybayan, Des Moines, for appellant mother.

Thomas J. McCann, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Chris Odell, Assistant Attorney General, and Michael Hunter, Assistant County Attorney, for appellee State.

Andrea Kurtz, Des Moines, for minor child.

Considered by Sackett, P.J., and Cady and Vogel, JJ.

SACKETT, P.J.

Susan and Alan, the birth parents of Justice, born in April 1995, challenge a trial court order terminating their parental rights. We affirm.

Our review of termination proceedings is de novo. *In re J.P.*, 499 N.W.2d 334, 337 (Iowa App. 1993).

Justice was removed from his birth parents' care and placed in foster care with the Iowa Department of Human Services before he and his mother left the hospital following his birth. Susan hurt Justice in trying to remove what she thought was mold from near the umbilical cord and circumcised penis.

Susan and Alan suffer mental disabilities. A guardian ad litem was appointed for each of them. Justice was found to be a child in need of assistance in June 1995. In August 1995, he went to live with a maternal aunt. He has never lived with his birth parents.

Alan and Susan have expressed anger throughout the proceedings. After one of Susan's visits with Justice in June 1995, she refused to return him. The police were called. Susan had no further visits until November 1995.

The petition to terminate the parental rights of Susan and Alan was filed in March 1996. In August, the juvenile court filed an order terminating their rights pursuant to Iowa Code section 232.116(1)(g) (1995) (termination where the child is three years of age or younger, has been found a child in need of assistance, has been removed from physical custody of parents for at least six of last twelve months or for

last six consecutive months and any trial period at home was less than thirty days, and child cannot be returned to parents' custody without risk of adjudicatory harm).

The court was concerned because Susan did not accept responsibility for hurting Justice at the hospital and Alan did not believe she had injured the child. The court believed Justice was in danger of being abused if returned to his parents' care, and it found reasonable efforts had been made to reunify the family and the State had made reasonable accommodations for the parents' mental disabilities.

On appeal, Susan argues: (1) the State failed to prove by clear and convincing evidence their parental rights should be terminated; and (2) they were denied equal protection because the State failed to accommodate them under the Americans with Disabilities Act. Alan argues: (1) the State did not establish the grounds for termination by clear and convincing evidence; (2) the actions of the State violated their right to due process; and (3) the State failed to properly accommodate them under the Americans with Disabilities Act.

Alan further claims their history of mental health problems is not sufficient to terminate their parental rights, and the fact they were homeless prior to Justice's birth is not relevant nor are their actions since Justice has been removed from their care. He further contends Justice has not bonded with them because the Department did not assist them in obtaining the return of their child, and the State failed to prove by clear and convincing evidence that Alan and Susan have inadequate parenting skills. Alan also argues the termination decision relied only on his and Susan's conduct from April

through June 1995 and does not take into account the progress they made thereafter. Finally, he and Susan both claim the child's maternal aunt interfered with their efforts at bonding and reunification with Justice.

The State argues the parents have not preserved their challenge to the services offered by the Department, or their claim they were not provided services as required by the Americans with Disabilities Act, or their due process claims. Justice's guardian ad litem has joined in the State's brief.

Susan and Alan have previously appealed from a dispositional order in this case. They challenged the placement of Justice with Susan's sister. The order was affirmed in *In re J.G.S.*, No. 95-1847 (Iowa App. Nov. 27, 1996).

The focal point of Susan's and Alan's appeal is that the State failed to provide them with the services they needed to care for Justice and, specifically, the State failed to comply with the requirements under the Americans with Disabilities Act. Both Susan and Alan have a long history of psychiatric problems.

The problem with this challenge is there is nothing in the record to show this issue was preserved for review by this court. This matter should have been raised before the juvenile court. *In re C.M.*, 526 N.W.2d 562, 566 (Iowa App. 1994).

The real issue, therefore, is whether there is clear and convincing evidence Justice cannot be returned to his parents. We review de novo giving weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses. *See In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

We recognize, as the parents argue, mental illness in and of itself is not sufficient reason to terminate parental rights. *See In re J.P.*, 499 N.W.2d at 337-38. But our supreme court has said termination may be ordered if the disabled parent lacks the capacity to meet the child's present and future needs. *In re A.M.S.*, 419 N.W.2d 723, 724 (Iowa 1988).

The record is replete with evidence both Susan and Alan possess few skills necessary to adequately care for a child. They have received services and responded with distrust and anger. We look to a parent's past performance because it is an indicator of the care a parent can provide in the future. *In re L.L.*, 459 N.W.2d at 494. Clearly, they are unable to provide for Justice's needs if he were to be committed to their care. The State has met its burden.

AFFIRMED.