

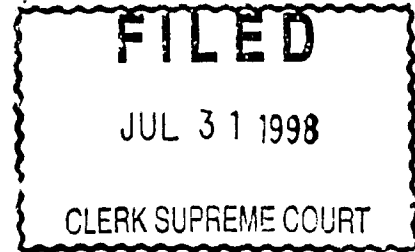
IN THE COURT OF APPEALS OF IOWA

No. 8-307 / 97-2023

IN THE INTEREST OF L.S.K., A Child,

J.S., Mother,
Appellant,

K.K., Father,
Appellant.



Appeal from the Iowa District Court for Delaware County, Jane Mylrea,
District Associate Judge.

Mother and father appeal the juvenile court's order terminating their parental
rights. **AFFIRMED.**

Dan McClean of the McClean Law Office, Dyersville, for appellant-mother.

Daniel Swift of Swift & Swift, Manchester, for appellant-father.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, for
appellee-State.

Mary Lou Tracey, Manchester, guardian ad litem for minor child.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Jean and Kevin appeal the juvenile court's order terminating their parental rights. Jean argues her due process rights were violated because she was not given sufficient time to comply with new case permanency plan requirements. Kevin joins in Jean's brief. We affirm.

Jean and Kevin are the parents of Leanne, born September 5, 1996. On September 9, 1996, a temporary removal order was entered due to health care workers' concerns that Jean was unable to care for the infant. Leanne was placed in the temporary custody of the Department of Human Services for placement in family foster care. In its removal order, the court noted Jean was diagnosed with schizophrenia, schizo-affective disorder, major depressive disorder, recurrent psychotic features, and borderline intellectual functioning. It further noted Kevin suffered from long-term mental illness.

On December 23, 1996, the juvenile court adjudicated Leanne to be in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c) (1995). It noted although the parents were receiving mental health services, they continued to "exhibit signs of agitation, instability, and domestic violence."

In June 1997, the State filed a petition for termination of parental rights under Iowa Code section 232.116(1)(g).¹ Following hearings in September and October 1997, the juvenile court terminated both parents' rights to Leanne pursuant to that section.

We review de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Therefore, we consider only those parts of the record we find were properly considered by the trial court. *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa App. 1996). We review "the facts as well as the law and adjudicate rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the course of the trial court's proceedings." *In re McDonald*, 201 N.W.2d 447, 453 (Iowa 1972); *see also Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

Although both parents appeal, only Jean has filed an appellate brief. Kevin joins in Jean's brief. Jean argues her due process rights were violated because the

¹ Iowa Code section 232.116(1)(g) reads:

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

case permanency plan was changed between the time the termination petition was filed and the termination hearing without court approval and she did not have time to complete the additional requirements before termination. The State responds the parents failed to preserve this issue for review because it was not raised or considered by the trial court.

Matters not raised in the trial court, including constitutional questions, 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). From our review of the record on appeal, we do not find a due process claim nor any claim concerning the changed case permanency plan raised before the juvenile court. A dispositional hearing was held on March 4, 1997, approving the January 30, 1997 case permanency plan. On April 16, 1997, an addendum was made to the plan, adding more issues to be resolved by the parents. The plan was reviewed with the parties and their attorneys on April 16. The modified plan was submitted to the court on July 1. The court held a hearing on July 8, 1997, at which all parties agreed the plan was to be given full force and effect. Kevin was not present, but was represented by counsel at the hearing, because he had fled the state to avoid termination of his parental rights. The record does not reveal any objections to the plan nor any claims of a due process violation at any hearing.

We conclude Jean and Kevin did not preserve any due process claims for review on appeal. We also conclude they did not preserve objections to the case permanency plan or addendum. We therefore affirm the decision of the juvenile court terminating Jean's and Kevin's parental rights to Leanne.

Even if these issues had been raised before the juvenile court, we still would affirm the terminations because the parents had notice and an opportunity to be heard on at least two occasions before the termination hearing. In addition, the statutory grounds for termination were met and termination was in Leanne's best interests. The parents' arguments to the contrary are without merit.

Because neither parent makes a claim on appeal that trial counsel was ineffective, we do not consider the representation provided by trial counsel. This issue is waived.

AFFIRMED.