IN THE COURT OF APPEALS OF IOWA

No. 1999-173 (9-390) / 99-90
Filed July 23, 1999

FILED
JUL 23 1999
CLERK SUPREME COURT

IN THE INTEREST OF T.L., Minor Child,

J.W., Father,
Appellant,

K.L., Mother,
Appellee.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Court Judge.

A mother and father appeal an order terminating their parental rights to their minor child. **AFFIRMED.**

Catherine K. Levine, Des Moines, for appellant father.

Christopher A. Kragnes, Sr., of Law Offices of Christopher A. Kragnes, Sr., P.C., Des Moines, for appellant mother.

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

Philip Reser, Des Moines, guardian ad litem for minor child.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

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PER CURIAM

A mother and father appeal an order terminating their parental rights to their minor son. The father claims the court erred in not reopening the record for additional evidence and that terminating his rights is not in his son's best interests. The mother claims the court should not have terminated her rights because it is not in the best interests of her son because of the closeness of their relationship. We affirm the juvenile court.

Background: Kathie is the mother and James the putative father of Timothy, born in 1988. The court placed Timothy in foster care in September 1996, after James physically abused him. The court ordered James to have no contact with Timothy. The court found Timothy in need of assistance under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (1995) in November 1996. He was returned to Kathie's care briefly but returned to foster care in December 1996, where he remained throughout this case.

Termination proceedings: The State filed a petition in July 1998, alleging James's rights should be terminated under Iowa Code section 232.116(1)(b)(1997) and both parents' rights should be terminated under sections 232.116(1)(c) and (e). The hearing was held on August 24, 1998. The juvenile court terminated the parental rights on December 14, 1998. James apparently[1] filed a motion on December 1, 1998,

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[1] The appendix contains a file-stamped copy of the motion. It contains no certificate of service. The official docket does not reveal the motion was filed. The State did not receive a copy of the motion.

seeking to reopen the record to introduce new evidence that he now was married and lived in a residence suitable for Timothy. On December 14, 1998, the juvenile court terminated the parents' rights under the sections alleged in the petition. The court found neither James (nor an unknown father) had provided any financial or emotional support during the course of the action. The court noted Kathie had not completed service programs and her failure to exercise visitation led Timothy to believe she was dead. The court also cited James's mental illness, his rights having been terminated concerning two other children, and his history of physical abuse.

On January 6, 1999, James filed a demand for ruling on the motion to reopen record. Before any ruling was entered on his own motion, James filed a notice of appeal on January 11, 1999. Kathie filed her notice of appeal on January 14, 1999, thirty-one days after the district court's termination order was entered.

On appeal, James first claims the juvenile court erred in not reopening the record for new evidence. James did not preserve error on this claim because the motion was not properly filed or served. The decision to reopen the record is within the juvenile court's discretion. *In re E.H., III*, 578 N.W.2d 243, 245-46 (Iowa App. 1998). Concerning the motion to reopen and the demand for ruling, those were waived when James filed this appeal. *Recker v. Gustafson*, 271 N.W.2d 738, 739 (Iowa 1978). We conclude the court did not abuse its discretion in not reopening the evidentiary record.

James claims the termination was improper because the visits between James and Timothy were "therapeutic" for Timothy. For authority, James cites cases for the propositions the best interests of the child are primary and "termination is not mandatory" even if the allegations of the petition are proved. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996) (citing *In re E.B.L.*, 501 N.W.2d 547, 552 (Iowa 1993) and *In re T.Q.*, 519 N.W.2d 105 (Iowa App. 1994)). He does not allege any of the discretionary grounds of section 232.116(3). His only claim is that Timothy will not receive the therapeutic benefits of working out issues with James during visitation. James claims "lack of these therapeutic visits will have serious repercussions on [Timothy's] life." We find no support for this. The needs of a child are promoted by termination of parental rights when the adjudicatory grounds still exist after the statutory time to cure has passed. *See In re Dameron.* 306 N.W.2d 743, 744-45 (Iowa 1981).

Kathie's appeal fails because this court does not have jurisdiction to hear the appeal. It was filed after the thirty-day filing time. Iowa R. App. P. 5(a). A timely appeal is jurisdictional, and the time limit for appeal cannot be extended by filing an improper posttrial motion such as a demand for ruling. *Union Trust & Sav. Bank v. Stanwood Feed and Grain, Inc.*, 158 N.W.2d 1, 3 (Iowa 1968). An untimely posttrial motion is defective and does not toll the running of the thirty-day period within which an appeal must be taken. *Lutz v. Iowa Swine Exports Corp.*, 300 N.W.2d 109, 110 (Iowa 1981) (citing *Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466, 471 (Iowa

1978)). Kathie cannot claim the five-day extension for a cross-appeal, since her appeal is not a cross-appeal. We are without jurisdiction to grant the relief requested. *See In re Marriage of Linberg*, 462 N.W.2d 698, 702 (Iowa App. 1990).

We affirm the juvenile court's termination of James's and Kathie's parental rights to Timothy.

AFFIRMED.