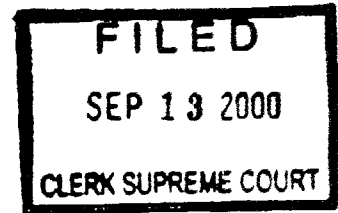


IN THE COURT OF APPEALS OF IOWA

No. 0-523 / 99-1982
Filed September 13, 2000



IN THE INTEREST OF

**A.T. AND F.F.,
Minor Children,**

**S.M., FATHER OF F.F.,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, James Weaver,
District Associate Judge.

Father appeals the termination of his parental rights. He contends the court (1) made no findings of fact as required under section 232.117, and (2) that he was not notified of the child in need of assistance filing. **AFFIRMED.**

Roland M. Caldwell, Legal Services, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Teresa Stoeckel, Assistant County Attorney, for appellee.

Muscatine Legal Services, Muscatine, for minor child.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

SACKETT, C.J.

Sean appeals a March 24, 2000 juvenile court order terminating his parental rights to his daughter, Faith, born in June of 1989. Sean contends the juvenile court failed to make findings supporting the termination of his parental rights by clear and convincing evidence. He further contends he was not notified of the underlying child in need of assistance proceedings. We affirm.

Sean and Faith's mother, Lenora¹, had a sporadic relationship but never married. At some point in the late 1980's Sean moved to Texas. Lenora testified that she is certain Sean is the biological father of Faith, however Sean's paternity has never been established. Lenora further testified the last time Sean saw Faith was when she was nine months old. Lenora also testified that Sean knew where she lived in Iowa. Sean does not challenge paternity. In May of 1999 a Department of Human Services worker spoke by phone with Sean. Sean told the worker the reason he had not been involved in Faith's life was because Lenora had told him she was involved with a good husband and he did not want to disturb the family.

On April 1, 1999, a petition to terminate Sean's parental rights was filed alleging Sean's parental rights to Faith should be terminated pursuant to Iowa Code section 232.116(1)(b), (d) and (e) (1999). Sean was served a copy of the petition to terminate and notice of hearing on May 28, 1999 while imprisoned in Taylor, Texas. The termination hearing was held on September 13, 1999. Sean was not present. Sean's guardian ad litem filed a written report. Sean's attorney

¹ Lenora's parental rights in regard to Faith have been terminated and are not subject to this appeal.

requested paternity testing and asked the court not to terminate his parental rights to Faith. His attorney presented no evidence on his behalf.

On November 16, 1999, the juvenile court filed a termination order lacking any findings of fact or conclusions of law. The order failed to terminate Sean's parental rights in regards to Faith. On March 24, 2000 the juvenile court filed an amended termination order terminating the parent-child relationship between Sean and Faith. The amended termination order also failed to include any findings of fact or conclusions of law.

We review termination proceedings de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App.1997). When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App.1996). In this case, however, we do not know what specific findings the juvenile court based the termination on nor do we know what statutory grounds the juvenile court used to hold termination was warranted.

Our review is de novo, therefore, we may review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We can affirm the trial court if any reason for doing so appears in the record. *See In re T.N.M.*, 542 N.W.2d 574, 575 (Iowa App. 1995). Our review of the record indicates that termination of Sean's parental rights pursuant to Iowa Code sections 232.116(1)(b) and (d) (1999) was supported by clear and convincing evidence.

Iowa Code section 232.116(1)(b) (1999) permits the juvenile court to terminate the parent-child relationship if the court finds that there is clear and convincing evidence that the child has been abandoned or deserted. Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by intent to forgo them. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Two elements are involved in this characterization. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). First, the giving up of parental rights and responsibilities refers to conduct. *D.M.*, 516 N.W.2d at 891. Second, the intent element refers to the accompanying state of mind. *Id.* Parental responsibilities include more than subjectively maintaining an interest in a child. *A.B.*, 554 N.W.2d at 293. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.*

Sean has not seen Faith in over eight years. During this time Sean has failed to maintain any of contact with Faith. He has never undertaken any parental responsibilities. He has failed to maintain communication with his daughter. He has not provided Faith financial or emotional support. He has failed to show a continuing interest in Faith even though he knew of her existence and the general area of her residence. In all respects Sean's conduct is evidence of his intent to relinquish his parental rights and responsibilities with respect to Faith. We find clear and convincing evidence exists in the record that Sean abandoned Faith.

The record and factual background of this case discussed previously also supports termination of Sean's parental rights by clear and convincing evidence

for failing to maintain significant and meaningful contact with Faith. See Iowa Code § 232.116(1)(d) (1999).

Finding clear and convincing evidence to support termination under two statutory grounds we affirm the decisions of the juvenile court.

Sean further contends he was not notified of the underlying child in need of assistance proceedings. The State contends error was not properly preserved for appellate review. We agree with the State that Sean has failed to properly preserve error.

Issues not presented in the juvenile court may not be raised for the first time on appeal, even a constitutional issue. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). The purpose of such an error-preservation rule is to give notice to the court and opposing counsel at a time when corrective action is still possible. *State v. Johnson*, 476 N.W.2d 330, 334 (Iowa 1991). Without this opportunity, we have no decision or action to review. See *State v. Wages*, 483 N.W.2d 325, 326 (Iowa 1992).

Sean asserts for the first time in his appellate brief that he was denied due process because he was not notified of the underlying child in need of assistance case. At the termination hearing Sean's attorney only requested paternity testing and asked the court not to terminate his parental rights. Sean's attorney never raised the lack of due process issue in the juvenile court. Because the juvenile court was not presented with nor ruled upon this issue it was not properly preserved for appellate review. We decline ruling on the merits.

Even if Sean had preserved the issue for review, he would not be successful. A parent waives lack of notice by appearing and participating in

juvenile court proceedings. See *In re J.F.*, 386 N.W.2d 149, 151-52 (Iowa App. 1986) (noting father waived right to have dispositional order vacated on grounds of lack of notice of CINA proceedings when he voluntarily intervened and participated in the CINA proceedings). See also *In re M.L.M.*, 464 N.W.2d 688, 690 (Iowa App. 1990) (holding although father should have been notified of CINA proceedings, failure to do so did not require reversal of termination and remand to include him in CINA proceedings); *In re Hewitt*, 272 N.W.2d 852, 857-58 (Iowa 1978).

The juvenile court order terminating the parental rights of Sean under Iowa Code sections 232.116(1)(b) and (d) (1999) is affirmed.

AFFIRMED.