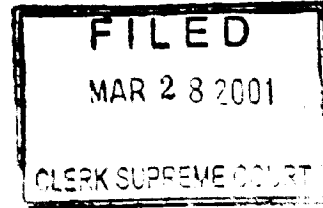


IN THE COURT OF APPEALS OF IOWA

No. 1-055 / 00-1117
Filed March 28, 2001

IN THE INTEREST OF
T.C. and T.K., Minor Child,

J.K., Father,
Appellant.



Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A father appeals from the termination of his parental rights to his two
children. **AFFIRMED.**

G. David Binegar, Davenport, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Gerda Lane, Assistant County Attorney, for appellee-State.

Carrie Coyle, Davenport, guardian ad litem for minor children.

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

PER CURIAM

Jeff, the father of Tanner and Taylyn, appeals the termination of his parental rights. He claims the court erred in finding (1) he failed to complete the case permanency plan requirements; (2) the children would suffer adjudicatory harm if returned to him; and (3) DHS made reasonable efforts for family reunification. We affirm.

Background facts and proceedings. Jeff is the father of Tanner, born in October 1992, and Taylyn, born in January 1997. The mother, Trenia, also has two other children by other fathers. The children were removed from Trenia's care on April 29, 1997.¹ They were adjudicated in need of assistance in August 1997 on the grounds in Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (1997), based on their parents' failure to provide appropriate care and supervision because of incarceration, domestic violence, substance abuse, and parenting deficiencies. DHS placed the children in the care of their maternal grandmother where they remained throughout the pendency of this case except for about six weeks in early 1998 when the children were in foster care.

The case permanency plan, Bethany treatment plan, and court orders provided for Jeff to provide suitable housing, to complete the batterer's education program (BEP) and comply with its recommendations, to obtain substance abuse treatment and comply with recommendations, to participate in parenting classes, to resolve all legal issues from his criminal cases, to complete his community service, and to comply with probation requirements. Jeff also needed to

¹ A fourth child, born to Trenia by another father in July 1998, was removed from Trenia's care in November 1998, and adjudicated in need of assistance in February 1999.

demonstrate a minimum of three months of sobriety and nonviolent conflict resolution before regaining custody of his children.

From the time of the children's removal in April 1997 until November 1997, Jeff struggled with complying with substance abuse treatment, parenting classes, visitation, employment, and housing. In November the court cancelled his visitation until Jeff demonstrated compliance with the case permanency plan. By April 1998, Jeff had completed substance abuse treatment, was involved in intensive outpatient treatment, had attended some parenting classes, and had started the BEP. One hour supervised visitation weekly was reinstated on April 17, 1998. By August 1998, Jeff had moved to Arizona in search of employment and all services and visitation ceased. A September 1998 report from Bethany indicated Jeff had completed the BEP. The October 1998 case permanency plan listed completion of the BEP and demonstration of continued sobriety with verified attendance at three or more Alcoholics Anonymous meetings weekly for three months as prerequisites for Jeff resuming visitation.

Jeff returned to Iowa and his visitation was reinstated in January 1999. By April, he had not missed any visits. They were going well and were moving toward less supervision. Jeff still did not have suitable housing or steady employment. After the permanency/review hearing in June 1999, the court granted the maternal grandmother guardianship of the children. By May 2000, Jeff's visits were sporadic. He continued to live with his parents and had not maintained steady employment. Jeff's father called DHS to request that visitation not occur in his home because of discipline problems with the children.

000046

The guardian ad litem filed a petition on February 28, 2000,² to terminate Jeff's and all the other parents' rights to their children. Following a hearing, the court terminated all parental rights. It terminated Jeff's parental rights under Iowa Code sections 232.116(1)(d), (e), and (g).³ The court specifically found:

The current evidence establishes that the father never did complete substance abuse treatment and he remains substance abusive. He never did complete Batterer's Education Program. He never has completed parenting education.

The court was concerned with Jeff's parenting deficiencies, his unsuitable lifestyle, and his substance abuse. Jeff appeals from this order. Trenia and the other fathers have not appealed the termination of their parental rights.

Claims on appeal. Jeff raises multiple issues on appeal. First, he alleges the court based its decision on mistaken evidence or by ignoring evidence Jeff completed the case plan requirements. Next he claims termination under Iowa Code sections 232.116(1)(d), (e), and (g) is not supported by clear and convincing evidence. Finally, he alleges DHS did not make reasonable efforts at reunification in that it did not provide financial assistance to him for living expenses and shelter.

A. *Erroneous findings.* In response to Jeff's claim the court based its decision to terminate his parental rights on mistaken findings, the State claims he waived "any due process and/or constitutional issues by failing to file a Rule 179(b) motion" and, thus, did not preserve this issue for appeal. See *In re A.R.*,

² The petition was amended on March 29, 2000 and again on April 23, 2000 to add additional statutory grounds for termination.

³ The various petitions alleged termination was proper on the grounds in sections 232.116(1)(b), (e), and (g). None of the petitions alleged section 232.116(1)(d) as a basis for terminating Jeff's parental rights. Jeff does not mention this discrepancy on appeal.

316 N.W.2d 887, 889 (Iowa 1982). We conclude a 179(b) motion is not required to preserve an evidentiary issue for our review on appeal. The State does not assert the district court's findings were correct. It only argues review is de novo and the decision may be affirmed if any basis for doing so appears in the record. From our de novo review of the record, we find Jeff is correct that some of the findings of the district court, concerning his completion of some requirements of the case permanency plan, are incorrect. Failure to complete the case permanency plan requirements, however, is not an independent ground for termination. Because our review is de novo, the district court's findings are not reversible error.

B. Evidence supporting grounds for termination. The court cited Iowa Code section 232.116(1)(d) as a ground for terminating Jeff's parental rights. That section was not pled in the petition to terminate his parental rights. Jeff has not challenged the conclusion on procedural grounds, but rather, on whether sufficient evidence supports the conclusion. We conclude Jeff has waived the claim based on the failure to plead section 232.116(1)(d). The State does not argue the decision is supported by clear and convincing evidence. Instead, it argues we can affirm if any ground is supported by the evidence, even if it is not a ground upon which the court based its decision. Jeff has maintained contact, provided financial support, demonstrated continued interest, and made a genuine effort to complete the responsibilities in the case permanency plan. We do not find clear and convincing evidence supports termination on this statutory ground.

The court also cited sections 232.116(1)(e) and (g) as grounds for terminating Jeff's parental rights. Jeff challenges only subsection (4) of both of

these sections. He claims he has good parenting skills and there is not “clear and convincing evidence that the children are likely to suffer any adjudicatory harm” if returned to his custody. His testimony at the termination hearing belies his claim. He admitted he has a substance abuse problem and should not be drinking. He admitted he has not abstained from alcohol, even though he knew he was to stay clean and sober. His earlier compliance with the substance abuse treatment was because he “wanted to do pretty much anything [he] had to do to be able to see [his] kids.” His drinking is one root of his parenting problems. The children would be at risk if returned to his care before he is willing to stop drinking.

During the pendency of this case, sexual abuse allegations were made relating to Jeff’s family. The allegation was founded but no perpetrator identified. Jeff lives with his parents in their home. That is where the abuse occurred. He has been unable to provide independent housing for himself or the children. They would be at risk if returned to his custody and care while he lives at home. We find clear and convincing evidence supports termination under sections 232.116(1)(e) as to Tanner and 232.116(1)(g) as to Taylyn.

C. Reasonable efforts. Finally, Jeff claims DHS did not make reasonable efforts to reunite the family because it gave Trenia financial assistance with living expenses and housing, but did not do the same for him. He raises this claim for the first time on appeal. We do not consider issues not raised in the district court. See *In re H.H.*, 528 N.W.2d 675, 678 (Iowa Ct. App. 1995). Even if the issue were preserved for review, financial assistance to help him obtain

independent housing for himself and the children would not alleviate the risks from his alcohol use. Termination still would be proper.

AFFIRMED.