IN THE COURT OF APPEALS OF IOWA

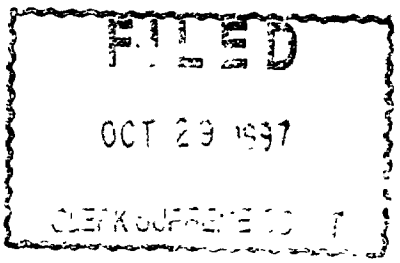
No. 7-517 / 97-0403

000153

IN THE INTEREST OF A.G., Minor Child,

G.E.G., Father,

Appellant.



Appeal from the Iowa District Court for Mills County, Gary K. Anderson, Associate Juvenile Judge.

Father appeals the termination of his parental rights to his minor child. **AFFIRMED.**

G. E. G., Omaha, Nebraska, pro se.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, and Connie E. Anstey, County Attorney, for appellee.

Richard C. Swenson of Swenson & Whitacre, Glenwood, guardian ad litem for minor child.

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

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MAHAN, J.

A father appeals the termination of his parental rights to his minor child. We affirm on appeal.

George and Patricia are the parents of Aretha, who was born in January 1982. Patricia left the family soon after Aretha's birth, leaving George to care for her and three older siblings.

The Department of Human Services (DHS) became involved in 1987 due to reports George was not providing adequate supervision for the children. George left the children home alone for long periods of time. The children were required to raise themselves. The home was cluttered with trash and broken glass. The children were frequently late to school, their clothes were dirty, and they had bad hygiene. Members of the community would sometimes feed the children because they were hungry. In January 1988, DHS issued a founded report of denial of critical care. George was offered numerous services.

On January 26, 1988, the children were adjudicated children in need of assistance (CINA). The juvenile court ordered George and the children to participate in individual and family counseling. The children were removed from the home on April 4, 1988, when George was evicted and had no place for the children to stay. Aretha was placed in a foster home.

George obtained a psychological evaluation in April 1988. Dr. Gary Larsen, a psychologist, determined George suffered from dysthymia, which is chronic

depression, and a schizoid personality disorder. George participated in supervised visitation and therapy for about the first six months after the children were removed from the home. He had no further contact with DHS or the children for several years.

After the children were removed from the home, Aretha's older sister revealed she had been sexually abused by George. He was charged with sexual abuse in the second degree. George pled guilty to lascivious acts with a child. He was incarcerated from May 1990 to October 1992 on that charge.

Even after he was released from prison, George had no contact with DHS until May 1995, when he appeared at a court hearing. George was informed he needed to participate in counseling before he could resume visitation. George refused to participate in counseling and, therefore, has had no visitation. George has sent some Christmas cards and birthday cards to Aretha.

Aretha has lived with the same foster family since April 1989. She does not want to have any contact with George. During therapy, Aretha has remembered incidents of physical abuse and inappropriate touching by George. Aretha wants very much to be adopted by her foster family.

On May 30, 1996, the guardian ad litem filed a petition for termination of parental rights.[1] During the termination hearing, George testified he was not seeking

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[1] Patricia did not appear at the termination hearing and has not appealed the termination of her parental rights.

to have Aretha returned to his care. He stated he wanted visitation only. Aretha testified she did not want to have any contact with George. Aretha's therapist, Kathy Bustos, testified it would be detrimental to Aretha's emotional and psychological well-being to have visitation with George. The juvenile court terminated George's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (i). George has appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32 ,34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. (Issues I to VII, XVII and XVIII) In his pro se appeal, George has raised twenty-four issues in which he claims the juvenile court has erred. Several of these issues seek to relitigate earlier orders. George claims the juvenile court erred by: (1) finding Aretha was a CINA; (2) ordering him and Aretha to attend therapy; (3) failing to order a continuance of the CINA proceedings; (4) placing Aretha in foster care; (5) denying him contact with Aretha; (6) ordering him to undergo a psychological evaluation; and (7) adopting the DHS recommendation that he participate in therapy. He also claimed he received ineffective assistance of counsel during the CINA proceedings.

The orders George complains of here were entered in 1988. We determine George failed to preserve error on these issues because he did not timely appeal the juvenile court orders. In addition, at the termination hearing George did not contest the original CINA adjudication or Aretha's placement in foster care. Issues not presented in the juvenile court may not be raised for the first time on appeal. *In re V.M.K.*, 460 N.W.2d 191, 193 (Iowa App. 1990).

III. (Issue VIII) After the guardian ad litem filed the petition for termination of parental rights, George filed a motion to amend or enlarge the juvenile court's findings in the last review hearing. He objected to the admission of hearsay testimony. The motion was considered at the termination hearing. The juvenile court denied the motion. The alleged errors were cured at the termination hearing because Aretha and her therapist both testified. We find no error in the juvenile court's ruling on this motion.

IV. (Issues IX, X and XII) George filed a motion to dismiss the petition for termination of parental rights. He claimed the petition failed to set forth a sufficient factual basis for the termination of his parental rights, as required by section 232.111(3)(c). This motion was also considered at the termination hearing and was denied. We agree with the juvenile court's conclusion that the petition adequately provided George with notice of the facts and grounds to support termination of the parent-child relationship. George received adequate notice the guardian ad litem sought to terminate his parental rights under sections 232.116(1)(d), (e), and (i).

V. (Issues XI, XV, XXI and XXIII) At the termination hearing, George objected to the admission of the documents from the CINA proceedings on the grounds of hearsay. The juvenile court overruled his objection and considered the documents.

Judicial notice of CINA proceedings is not limited to evidence, but includes any part of the CINA record. *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa App. 1988). Because of the interdependent nature of CINA and termination actions, evidence properly admissible in an adjudicatory proceeding should be accorded the same standard of admissibility in a subsequent hearing on termination pertaining to the same child. *In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994).

We also note under section 232.96(6) relevant hearsay evidence may be admissible in termination proceedings. *In re E.J.R.*, 400 N.W.2d 531, 533 (Iowa 1987). We determine the juvenile court properly considered the record in the underlying CINA action in this case, including the 1989 testimony of George's therapist.

VI. (Issues XIII and XIV) George claims his parental rights were terminated under an illegal ex post facto law. He also claims the termination violates the double jeopardy provision of the Fifth Amendment. George did not raise these claims before the juvenile court. An issue not raised before the juvenile court, even a constitutional one, may not be raised for the first time on appeal. *V.M.K.*, 460 N.W.2d at 193.

VII. (Issue XVI) George contends the juvenile court should not have given weight and credibility to the opinions of experts without first determining whether the opinions given were actually expert opinions or were merely the opinions of an individual deemed an expert. George's complaint involves the testimony of Aretha's therapist. George did not object to this testimony at the termination hearing and, in fact, he elicited some of the testimony now complained of. We find he has failed to preserve this issue for our review. *See V.M.K.*, 460 N.W.2d at 193.

VIII. (Issue XIX) George claims the juvenile court gave too much weight to the testimony of his therapist at a 1989 CINA review hearing. The therapist testified to George's mental condition and the results of the psychological evaluation. In our de novo review, we give this testimony the weight we feel it deserves. George's mental condition is relevant to the issues raised in the petition to terminate parental rights.

IX. (Issue XX) George believes the juvenile court considered only the evidence which favored the State. Again, our review is de novo. We have considered all of the evidence presented at the termination hearing. We find there is clear and convincing evidence to support termination of George's parental rights under sections 232.116(1)(d), (e), and (i). Aretha was removed from George's care in 1988. He has been given an *extremely* long time to overcome his parenting deficiencies. During this period of time, George has made no effort to resume the care of Aretha. We also

note at the termination hearing he testified he sought only visitation. We conclude the juvenile court properly terminated his parental rights.

X. (Issue XXII) George asserts the State failed to present clear and convincing evidence he had no significant and meaningful contact with Aretha, pursuant to section 232.116(1)(d). George has not had visitation with Aretha for many years. He sent her a few birthday cards and Christmas cards. We determine there was clear and convincing evidence to show he did not have significant and meaningful contact with Aretha.

XI. (Issue XXIV) George claims it is not in Aretha's best interests to separate her from her brother Michael.[2] Michael has stated he did not want to have George's parental rights terminated. Michael lives in group foster care and has not lived with Aretha for several years. For these reasons, we find it would not be detrimental to Aretha to have George's parental rights terminated as to her, but not as to Michael.

Furthermore, Aretha's therapist testified contact with George would be detrimental to Aretha's emotional and psychological well-being. We conclude it is in Aretha's best interests to terminate George's parental rights.

We have considered all issues raised in this appeal. We affirm the decision of the juvenile court terminating George's parental rights to Aretha.

AFFIRMED.

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[2] Aretha's two oldest siblings are now adults and are no longer subject to the supervision of the juvenile court.