

IN THE COURT OF APPEALS OF IOWA

No. 3-287 / 93-117

FILED

JUN 29 1993

CLERK SUPREME COURT

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IN THE INTEREST OF A.S., A.G. and E.G., Minor Children,
A.G., Sr., Father of A.G. and E.G.,
Appellant.

Appeal from the Iowa District Court for Scott County,
James A. Weaver, Juvenile Court Judge.

A.G. appeals the juvenile court's termination of his
parental rights with regard to minor children A.G., Jr. and
E.G. **AFFIRMED.**

Jeffrey D. Bert of Newport, Bell & Oxley, Davenport,
for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Kathrine S.
Miller-Todd, Assistant Attorney General, for appellee
State.

Vincent J. Motto of Vander Vennet, Motto & Aitken,
P.C., Davenport, guardian ad litem for minor children.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

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A.G. is the natural father of A.G., Jr., born in 1989, and E.G., born in 1990. P.S. is their natural mother. P.S. also has a child from a prior relationship, A.S., born in 1986.

In September 1990, A.S. was adjudicated to be a child in need of assistance (CINA) after A.G. confessed to having broken A.S.'s jaw in two places in July 1990. The juvenile court issued a protective order preventing A.G. from having contact with A.S. From August 1990 to December 1990, A.G. was in jail due to a previous conviction for operating a motor vehicle while intoxicated.

In January 1991, A.G., Jr. and E.G. were adjudicated CINA. Custody was left with P.S. In February 1991, A.G. was found on P.S.'s porch while A.S. was present, in violation of the protective order. This violation constituted a violation of A.G.'s probation and A.G. was sent to jail. All three children were removed from P.S. and placed in foster care.

In March 1991, a quarterly report indicated A.G. and P.S. were living together again. A June 1991 report indicated A.G. failed to follow through with the services offered to him, including parenting classes and individual sessions with a social worker. A.G. also failed to complete substance abuse treatment or participate in the domestic violence program. Between June and September 1991, A.G. visited A.G., Jr. and E.G. only three times out

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of a possible thirteen visits. His last visit with the boys was in August 1991. In March 1992, Lutheran Social Services reported A.G. had not had any contact with the social worker since August 1991.

A petition for termination was filed in August 1992 and a hearing was held in October 1992. A.G. was not present or represented at the termination hearing. In December 1992, the juvenile court terminated A.G.'s parental rights pursuant to Iowa Code sections 232.116(1)(g) and (h) (1991).

A.G. now appeals. He argues he was denied his constitutional right to due process in the termination proceedings. Specifically, he contends the State failed to notify him of the intent to terminate his parental rights on the basis of abandonment. He also claims he was denied due process because the State failed to include a factual basis for termination in the termination petition.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

Initially, we consider whether A.G. has properly preserved these constitutional issues for review. A.G. has not shown where these issues were raised before the

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juvenile court. There were no proceedings in the lower court in which the State had an opportunity to answer to the errors which A.G. now alleges. Because these issues were not raised before the juvenile court, we need not consider them on appeal. In re V.M.K., 460 N.W.2d 191, 193 (Iowa App. 1990). Even issues of constitutional magnitude will not be addressed by this court if not presented in the trial court. Id. (citing In re L.K.S., 451 N.W.2d 819, 822 (Iowa 1990)).

A.G. concedes these issues were not raised before the juvenile court. However, A.G. contends this court may address an issue if it is important and may arise again in other termination proceedings. See V.M.K., 460 N.W.2d at 193 (appellate court addressed whether termination should have been avoided due to mother's civil commitment despite failure to raise this issue before the juvenile court). On our review, we find A.G. clearly was not denied due process in these termination proceedings. We conclude the issues raised by A.G. are not sufficiently important so as to merit consideration by this court despite A.G.'s failure to preserve error for review.

The costs of this appeal are taxed to A.G.

For the reasons stated, we affirm the judgment of the juvenile court.

AFFIRMED.

Habhab, J., concurs; Sackett, J., specially concurs without opinion.