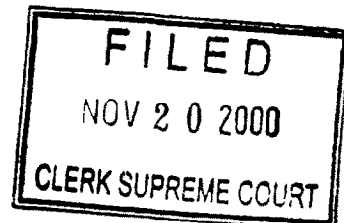


IN THE COURT OF APPEALS OF IOWA

No. 0-679 / 00-0846
Filed November 20, 2000



IN THE INTEREST OF N.M., Minor Child,

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan,
District Associate Judge.

Mother appeals from the juvenile court order terminating her parental
rights. **AFFIRMED.**

Tiffany Koenig, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, and Martha Johnson, Assistant County Attorney, for appellee-State.

Pamela A. Vandel, Des Moines, for minor child.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her child. She claims the court abused its discretion by terminating her rights because the child was in the care of relatives. We affirm on appeal.

Jennifer is the mother of Nicole, who was born in February 1999. Jennifer is a low-functioning adult. Jennifer and Nicole lived in the home of Jennifer's mother. Jennifer received assistance from the Healthy Start Program, Visiting Nurse Services, and Family Preservation Services. There were concerns Jennifer was not regularly feeding Nicole or changing her diaper. The maternal grandmother was warned not to leave Jennifer alone with Nicole, but she continued to do so.

Nicole was removed from Jennifer's care in June 1999, after Jennifer fell down while holding Nicole, and both required medical treatment. Even while she was receiving services, there were concerns about Jennifer's ability to care for Nicole. Nicole was placed in foster care. She was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (n).

Jennifer had a psychological evaluation which found she was mildly mentally retarded. The evaluation stated:

In the areas that would be needed for problem solving and child rearing, she tends to function in the Defective Range, i.e. Social Comprehension and Reality Testing and Common Sense. Also, with regard to alertness in reacting to environmental events, she functions in the Borderline Range. Since her capacity for new learning is in the Borderline Range as well, it is not anticipated that she will be making any large cognitive gains if placed in skill building programs. Individuals who function cognitively where she

does are typically unable to parent their children alone or without a great deal of structure and supervision.

The evaluation determined Jennifer would need full-time supervision to properly care for her child.

Jennifer participated in supervised visitation with Nicole. Jennifer did not understand Nicole's cues, and would try to stimulate her when she was tired. A social worker provided parenting skill lessons during visitation. Jennifer was resistant to suggestions. She also attended a parenting support group. Her parenting skills did not improve.

In October 1999, paternity test results showed Joseph was Jennifer's father. Joseph's parents then asked to be considered as a placement option for Nicole. They completed a parenting class. In February 2000, Nicole was placed in the care of the paternal grandparents. They have indicated an interest in adopting her.

In January 2000, the State filed a petition to terminate the parental rights of Jennifer and Joseph to Nicole. On April 25, 2000, the juvenile court terminated Jennifer's parental rights under sections 232.116(1)(g) and (h), and Joseph's parental rights under section 232.116(1)(g). The court found the parents were lower functioning and were unable to care for the child on a full-time unsupervised basis. Jennifer appeals.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App.

1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Jennifer does not contest the statutory grounds for termination of her parental rights. She asserts the juvenile court should have exercised its discretion under section 232.116(3)(a) to refuse to terminate her parental rights because Nicole is in the care of the paternal grandparents. Under this section, the court need not terminate the relationship between the parent and the child if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a).

We question whether this issue has been preserved for our review. The termination order did not address any issues raised by section 232.116(3). Jennifer did not file a motion pursuant to Iowa Rule of Civil Procedure 179(b). An issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa App. 1994). By failing to file a 179(b) motion in juvenile court, Jennifer waived this issue. See *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994). We find this issue has not been preserved.

Even if this issue were preserved, we would find the district court did not abuse its discretion in terminating Jennifer's parental rights. Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *J.L.W.*, 570 N.W.2d at 781. We must consider a

child's long-range and immediate best interests. *In re A.B.*, 492 N.W.2d 446, 450 (Iowa App. 1992).

We determine it is in Nicole's best interests to terminate Jennifer's parental rights. Jennifer is unable to care for Nicole, and probably never will be able to care for the child. Jennifer was resistant to suggestions to improve her parenting skills. The needs of Nicole, not Jennifer, must be paramount. See *J.L.W.*, 570 N.W.2d at 581 ("At some point, the rights and needs of the child rise above the rights and needs of the parents.") The juvenile court did not abuse its discretion by terminating Jennifer's parental rights.

We affirm the decision of the juvenile court.

AFFIRMED.