

IN THE COURT OF APPEALS OF IOWA

No. 0-073 / 09-1877
Filed February 10, 2010

**IN THE INTEREST OF C.K.M.-R.,
Minor Child,**

**R.J.R., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his child.

AFFIRMED.

Steven J. Drahozal of Drahozal & Schilling, Dubuque, for appellant father.

Natalia Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Patricia M. Reisen-Ottavi, Dubuque, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Ron, the father of a child born in 2008, contacted the Iowa Department of Human Services and said he was feeling overwhelmed to the point of harming himself. A child abuse assessment was initiated but deemed unfounded. According to the department, the father nonetheless agreed to place the child in foster care “to get some help.” The child was formally removed, was subsequently returned to Ron’s care, but was removed again when Ron twice failed to retrieve her from caregivers.

The State petitioned to terminate Ron’s parental rights to his daughter. Following a hearing, the juvenile court granted the petition.

On appeal, Ron contends: (1) termination was not in the child’s best interests “because a relative placement had been approved,” and (2) the juvenile court should have granted his request “for a finite extension.” Our review is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000); see *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010).

I. Iowa Code section 232.116(3)(a) (2009) allows a court to defer termination if a child is in the legal custody of a relative. Ron asserts that the juvenile court should have utilized this option.

As a preliminary matter, the State asserts that Ron did not preserve error on this contention. We tend to agree, as the juvenile court did not address the appropriateness of a relative placement. Nonetheless, we will assume without deciding that this omission does not pose an obstacle to review and we will proceed to the merits of Ron’s contention. See *State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

At the early stages of the proceedings, the juvenile court authorized the department to investigate potential placement options with extended family members. Pursuant to an Interstate Compact with Wisconsin, the Iowa Department of Human Services requested a home study of Ron's aunt, who lived twenty minutes away from Ron on the Wisconsin side of the Iowa-Wisconsin border. A Wisconsin social services department determined that the aunt was a suitable placement option. The recommendation, however, was delayed in the Interstate Compact office, and the Iowa department's social worker assigned to Ron's case did not receive a final recommendation until the day of her testimony at the termination hearing. The social worker testified that Wisconsin's recommendation was approved "with conditions," but she had not yet been able to determine what the conditions were. She also noted that the child had been placed in an adoptive Iowa home one month before the termination hearing.

Ron testified at the termination hearing but did not address the nature of his relationship with this Wisconsin aunt, whether the aunt shared a bond with him or with his daughter, whether he believed the aunt to be a suitable placement option, or whether he would visit the child regularly if she were placed with the aunt.

On the question of visitation, Ron conceded that in the two months preceding the termination hearing he failed to take full advantage of the opportunities afforded to him for contact with his child. This failure calls into question Ron's present assertion that "[t]he relative placement in this case would have afforded [him] an opportunity to 'interact and re-unify with [his daughter].'"

Ron's future ability to exercise visitation with his daughter was also called into question, as Ron testified that he was on probation for a drug violation yet had used marijuana the weekend before the termination hearing. As the juvenile court stated, "Ron continues to flirt with an extended jail sentence given his ongoing use of illegal substances while on probation."

For these reasons, we conclude the relative placement was not a viable alternative to termination.¹

II. The father asked for a "finite extension" of time for him to continue with services. In denying the motion, the juvenile court cited Ron's inability to support himself as well as the prospect of a jail sentence. The court also stated that

Ron will need a significant amount of time before he is in a position to appropriately support and care for himself, and even longer before he is able to properly care for a small child.

We agree with the court's reasoning and find that it is supported by the record. Accordingly, we affirm the juvenile court's denial of Ron's motion for an extension.

We affirm the juvenile court's termination of Ron's parental rights to his daughter, born in 2008.

AFFIRMED.

¹ The State also argues that section 232.116(3)(a) only applies to relatives who have legal custody of the child, which Ron's aunt did not possess. In light of our disposition, we find it unnecessary to address this argument.