

IN THE COURT OF APPEALS OF IOWA

No. 0-481 / 10-0875
Filed August 25, 2010

**IN THE INTEREST OF J.A.W.,
Minor Child,**

**J.A.S., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A father appeals from a juvenile court order terminating his parental rights to a child. **AFFIRMED.**

Angela Kayl, Sioux City, for appellant.

Jacob Soliz, Sioux City, appellant pro se.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and J. Aaron Kirsch, Assistant County Attorney, for appellee.

Lesley Rynell, Sioux City, for mother.

Molly Joly, Sioux City, attorney and guardian ad litem for minor child.

Considered by Potterfield, P.J., Doyle, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

J.S. is the father, and E.W. is the mother, of J.A.W., who was twenty-four months of age at the time of a March 2010 permanency and termination of parental rights hearing. J.S. appeals from a May 2010 juvenile court order terminating his parental rights to J.A.W. (The order also terminated the parental rights of E.W., who has not appealed.) We affirm.

J.S. and E.W. have never been married. In September 2008, when J.A.W. was six months of age, the State filed a petition alleging J.A.W. to be a child in need of assistance (CINA). At that time E.W. had identified J.S. as one of three possible fathers of J.A.W.¹ Within days after the State filed its CINA petition E.W. placed J.A.W. in the care of J.S.'s mother in Texas. J.A.W. has thereafter remained in her care.

At the outset of the CINA proceeding neither J.S.'s whereabouts nor any last mailing address for him could be determined. The juvenile court ordered that personal service and any alternative service on him be dispensed with.

An adjudicatory hearing was scheduled for late October 2008, but was continued to allow completion of a home study of J.S.'s mother's home. The juvenile court's order continuing the adjudicatory hearing to late December ordered the Iowa Department of Human Services (DHS) to obtain a home study of J.S.'s mother's Texas home, and ordered that J.S. undergo genetic paternity testing. By this time J.S. was in the Woodbury County jail, and a copy of the court's order was sent to him there.

¹ As of February 2009, later paternity testing had established that J.S. was in fact J.A.W.'s father.

In late December 2008 the juvenile court held an adjudicatory hearing. Texas had declined to conduct a home study of J.S.'s mother's home, because J.A.W. had not yet been adjudicated a CINA. The juvenile court adjudicated J.A.W. to be a CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2007). It ordered J.A.W. placed in the custody of the DHS for placement in family foster care, relative care, or in the care of another suitable person.

In both a February 2009 dispositional order and a June 2009 dispositional review order the juvenile court continued J.A.W.'s previously ordered status. A copy of the June order was sent to J.S. at the Clarinda correctional facility, at which J.S. was by then imprisoned. A July 2009 Texas home study recommended placement of J.A.W. in the home of J.S.'s mother.

A permanency hearing for J.A.W. was scheduled for early November 2009 but continued to late January 2010. A copy of the juvenile court's resulting order was sent to J.S. at the Clarinda correctional facility.² In mid-January the State filed its petition seeking termination of parental rights. The court entered an order scheduling a hearing on the petition for early March. The court also ordered that J.S. be served by publication.³

² The record reflects that J.S. had been released from the custody of the Iowa Department of Corrections in October 2009. However, nothing in the record indicates that any documents mailed to J.S. at the Woodbury County jail or at the Clarinda correctional facility were returned to the clerk as undelivered or undeliverable. J.S. in testimony acknowledged receiving "paperwork." In an oral ruling the juvenile court found that such "paperwork" involved both J.A.W. as well as another child of E.W.'s who was the subject of a CINA proceeding.

³ The termination file contains an affidavit by a legal secretary in the county attorney's office, dated January 21, 2010, and filed January 22, 2010, stating that "the State has no known mailing address for [J.S.] despite diligent efforts to ascertain such information from mother, the Iowa Department of Human Services, the police and other public

At the time of the late-January permanency hearing E.W. moved to continue the hearing to the time of the termination hearing. The court sustained her motion. A copy of the court's resulting order was sent to J.S. at the Clarinda correctional facility.

J.S. attended and participated in the termination hearing. He testified he had been living with an aunt and attending school since just after mid-January.

Following the combined permanency and termination hearing the juvenile court made detailed findings of fact, conclusions of law, and a resulting order.

The court found, in part:

[J.S.] has never involved himself in the life of [J.A.W.]. He has been absent from [J.A.W.'s] life through continual incarcerations. He has never contacted the [DHS] or this court regarding the welfare of [J.A.W.]. He has never provided any emotional, physical or financial support to [J.A.W.]. He has done nothing to assume the responsibilities inherent of a parent. He has not requested or participated in any services designed to have [J.A.W.] placed under his care. . . . [J.A.W.] does not know [J.A.W.'s] father. [J.A.W.] has been abandoned by [J.A.W.'s] father.

These findings are fully supported by the record, we agree with them, and we adopt them as our own. The juvenile court terminated J.S.'s parental rights pursuant to Iowa Code section 232.116(1)(b) (2009) (abandonment). J.S. appeals, seeking reversal of the order terminating his parental rights.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of

records." The termination file also contains a "Proof of Publication" in the form of an affidavit showing publication of notice to J.S., in the Sioux City Journal, on January 25, February 1, and February 8, 2010, of the pending termination petition, and a summons to appear for the March 4 hearing, giving date, time, and location of the hearing.

the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

J.S. first claims that the DHS did not use diligent efforts to contact him, as he was not served with a copy of the CINA petition or a copy of the termination petition even though the DHS became aware of his incarceration. The record shows that J.S. was well aware of the CINA proceedings. He was sent copies of court orders beginning with the late October 2008 order continuing the adjudicatory hearing, ordering a home study of his mother's Texas home, and ordering him to participate in genetic paternity testing. He in fact participated in the ordered paternity testing, and he attended the rescheduled permanency hearing, thus submitting to the jurisdiction of his person in the CINA proceeding.

The record does indicate that J.S. was not personally, formally served with the termination petition before the termination hearing. The record also shows, however, that he was well aware of the proceeding. He attended the termination hearing, and acknowledged receiving notice of the hearing. He participated in the hearing. By attending and participating without objecting to not having been served with a copy of the termination petition he submitted to jurisdiction of his person for purposes of the termination proceeding and hearing.

We conclude J.S.'s complaint about not being served with a copy of the petitions involved in this case, raised for the first time in this appeal, does not entitle him to any relief on appeal.

J.S. also claims the DHS did not provide services to him before the termination proceeding was instituted. “The State must make reasonable efforts to provide services to a parent before termination proceedings may be instituted.” *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002) (citations omitted). However, a parent who feels that services are inadequate or inappropriate must object early in the process in order that appropriate changes may be made. *C.B.*, 611 N.W.2d at 493-94. While the State has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services before a permanency or termination hearing, and if the parent does not do so, the issue has not been preserved for appellate review. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005); *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). J.S. raised no issue concerning services before the termination hearing. This issue is not preserved for our review, and we do not further address it.

J.S. was not represented by counsel. He claims he was not given an opportunity to seek counsel. He argues that at the termination hearing he requested a continuance so he could seek counsel. Although J.S. makes no express claim that the juvenile court erred in denying his request for continuance, this seems to be the thrust of his assertions.

We review [the juvenile court’s denial of] a motion for continuance under an abuse of discretion standard and will only reverse if injustice will result to the party desiring the continuance. Denial of a motion to continue must be unreasonable under the circumstances before we will reverse.

In re C.W., 554 N.W.2d 279, 281 (Iowa Ct. App. 1996) (citations omitted).

J.S. was well aware of both the underlying CINA proceeding and the termination proceeding. He had been released from incarceration before the termination petition was filed, before the permanency hearing was convened but then continued to a later date, and well before the permanency and termination hearing was held.⁴ J.S. clearly had the right to be represented in both the CINA and termination proceedings by retained counsel, or by appointed counsel if financially unable to employ counsel. See Iowa Code §§ 232.89(1) and 232.113(1) (providing such rights as to CINA and terminations proceedings respectively). However, despite his awareness of the CINA and termination proceedings, at no time before the termination hearing did J.S. secure the services of an attorney, contact the DHS or the juvenile court to seek or secure appointment of an attorney, or contact the DHS or the juvenile court to seek or secure services. His request for a continuance in fact came after the State and E.W. had each presented their evidence at the termination hearing.

We conclude that, under the circumstances shown, the juvenile court's denial of J.S.'s request for continuance was not unreasonable. No abuse of discretion is shown.

AFFIRMED.

⁴ As earlier noted, he was released in October 2009, even before the CINA dispositional hearing.