

IN THE COURT OF APPEALS OF IOWA

No. 0-607 / 10-1148
Filed September 22, 2010

**IN THE INTEREST OF E.H.,
Minor Child,**

**E.H., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

Alexandra M. Nelissen of Nelissen & Juckette, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant
County Attorney, for appellee.

Aaron Ginkens of Ginkens & McConnell, P.L.C., Clive, for mother.

Kimberly Ayotte, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

SACKETT, C.J.

A father appeals from the juvenile court order terminating his parental rights to a child. He contends the State did not prove the statutory elements for termination and termination was improper because of the closeness of the parent-child bond and because the child was in the custody of a relative. We affirm.

Background and Proceedings.

This child came to the attention of the Department of Human Services because the mother tested positive for illegal drugs while pregnant. After the child's birth in April of 2009, the parents left the hospital before discharge when they learned of the child protective assessment concerning the child. In May the State petitioned to have the child found to be in need of assistance. On June 23, 2009, after the child was found to be in need of assistance, the child was removed from the custody of the parents and placed in foster care. The child's placement in foster care was confirmed in the July 30 dispositional order and the January 28, 2010 review order.

During the progress of this case, the father was offered or participated in a variety of services, including supervised visitation; drug screens; individual counseling; anger management classes; parenting skills; family safety, risk, and permanency services. He also attended a fatherhood initiative group. Primary concerns of service workers were the father's lack of control of his anger, and his lack of consistency in performing routine parenting tasks such as putting on

diapers, providing food, arranging for doctor appointments for the child, putting the child in a car seat, and providing clean bottles for feeding the child.

In February of 2010, the State petitioned to terminate the parental rights of both parents. Concerning the father, the State alleged grounds existed under Iowa Code sections 232.116(1)(b) (abandonment), (e) (significant and meaningful relationship), and (h) (safe return to parent) (2009). Following a contested hearing on March 18, April 21, and April 22, the court terminated the father's parental rights under subsections (e) and (h) by order filed June 20.¹ The court did not find clear and convincing evidence supported termination under subsection (b). Concerning subsection (e), the court concluded:

[The father] has had a place in his child's life in that he has participated in visitation, but his importance to the child has been diminished. While he has taken something of a checklist approach to the permanency plan requirements, i.e. focusing on being able to say he did everything, but not demonstrating growth and change through participation in services. He is either incapable of establishing himself as a capable parent or is unwilling to make the changes to accomplish such a goal.

Concerning subsection (h) the court concluded the child could not be returned to the custody of the parents without being subject to adjudicatory harm. The court further concluded the child could not be returned to the father's custody "because of his inability to assume parental responsibilities or demonstrate understanding of even basic parenting skills." "[The parents] have been unable to contribute to the child's welfare in any meaningful way."

¹ At the beginning of the proceedings on April 21, the mother signed a consent to termination. The court terminated her parental rights under sections 232.116(1)(a), (b), (e), (g), and (h). Her parental rights are not at issue in this appeal.

Scope and Standards of Review.

Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. See Iowa Code § 232.117. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

Merits.

The father contends the statutory grounds for termination cited by the juvenile court are not supported by clear and convincing evidence. The record before us contains clear and convincing evidence the child would be at risk if returned to the father's care. As recently as January and February before the March and April termination proceedings, the father would make formula in the unwashed, putrid bottle used at previous visitations, over the objections of the

worker supervising visitation. The father was unable to make a doctor's appointment for the child, could not remember the name of the doctor, and became angry on the phone when trying to make the appointment. He put the child's diaper on backwards several times. He forgot to bring food for the child. We affirm the termination of his parental rights under section 232.116(1)(h).

The father further contends termination of his parental rights is not in the best interest of the child. He argues the court acted contrary to section 232.116(3) because "the court does not need to terminate if the child is in the custody of relatives or if termination would be detrimental to the child due to the closeness of the parent-child relationship."

Although there is some testimony of a bond between the father and the child, there is no evidence it would be detrimental to the child to sever that bond. Neither argument is addressed in the termination order. We find no motion to amend or enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2). We conclude neither argument is preserved for our review. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Even issues of constitutional magnitude will not be addressed on appeal if not presented in the trial court. *In re V.M.K.*, 460 N.W.2d 191, 193 (Iowa Ct. App. 1990).

We agree with the juvenile court's conclusion that the child "needs a long-term commitment by an adult who will be appropriately nurturing, supportive of [the child's] growth and development, and who appropriately meet [the child's] physical, mental and emotional needs." See Iowa Code § 232.116(2) (setting

forth considerations for a child's best interests). The father is not able to meet these needs. Termination of his parental rights serves the child's interest.

AFFIRMED.