

IN THE COURT OF APPEALS OF IOWA

No. 3-1030 / 13-1407
Filed November 20, 2013

**IN THE INTEREST OF B.K. and M.K.,
Minor Children,**

J.K., Father,
Appellant,

A.K., Mother,
Appellant.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A.K. and J.K. appeal the juvenile court ruling in a child in need of
assistance proceeding. **AFFIRMED.**

Jared R. Weber, Orange City, for appellant-father.

Robert B. Block II, LeMars, for appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant
County Attorney, for appellee.

Kathryn C. Kirts of Juvenile Law Center, Sioux City, attorney and guardian
ad litem for minor children.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

BOWER, J.

A.K. and J.K. appeal the juvenile court ruling in a child in need of assistance (CINA) proceeding. The juvenile court determined the two children should remain in the care, custody and control of the department of human services (DHS) for placement in a planned permanent living arrangement. Both parents individually argue it is in the children's best interests to be returned to their care. J.K., the father, also argues the juvenile court erred in allowing the permanency hearing to proceed without the presence of the children. We find the juvenile court's permanency order is in the children's best interests. We also find error was not preserved on the procedural issues or the delay in the permanency determination. We affirm.

I. Background Facts and Proceedings

A.K. and J.K. are the parents of two children who were removed from their care. During a permanency hearing held on June 7, 2013, the juvenile court determined the children could not be returned to their parent's home and should continue in the care, custody, and control of DHS with the parents continuing to have visitation.

At the time of the removal, the children were living in a home with A.K.¹ The children were removed due to A.K.'s failure to provide a clean, safe, and adequate home. The home was found to be extremely dirty and cluttered to the point the children were unable to sleep in their own beds. A.K. admitted the home contained animal feces and urine and there were dirty dishes throughout

¹ J.K. was incarcerated, prior to removal, in the state of Florida. He has since been released and is living in the home with A.K.

the home, including in the bathtub. There are further allegations A.K., who has been diagnosed with depression and bi-polar disorder, allowed her boyfriend to live in the home. He sexually abused one of the children and used the internet to view inappropriate images of young boys.

The children were adjudicated in need of assistance and initially allowed to remain in the home with A.K. DHS moved the children to foster care after A.K. failed to participate in services offered to help her maintain a safe and sanitary home.

Since his release from prison, J.K. has attempted to be part of the children's lives. Following an allegation of inappropriate sexual conversations in the presence of the children, J.K. was directed to participate in therapy to address sexual and relationship issues. At the time of the hearing, he had only been in therapy for one month, even though it had been recommended much earlier.

The parents have been participating in supervised visitation with the children; although it is alleged A.K. has attempted to have unsupervised contact with the children.²

The children did not appear at the hearing, however, their guardian ad litem informed the court of the children's desire to return home. Further testimony established the children continue to act out inappropriately in public, though recent progress has been made.

² There is also disagreement between the DHS caseworker and J.K. as to the consistency in visitation. The caseworker testified the parents have not consistently participated, however, J.K. disagrees.

II. Standard of Review

We review the juvenile court's ruling de novo. *In re A.B.* 815 N.W.2d 764, 773 (Iowa 2012). Weight is given to the juvenile court's factual findings, but we are not bound by them. *Id.*

III. Discussion

A. Procedure and Delayed Permanency

J.K. argues the children, who are over fourteen years of age, should have been given an opportunity to attend the hearing or, the district court should have made several determinations required by Iowa Code section 232.91(4) (2013).

Section 232.91(4) requires the district court to determine whether a child was given the opportunity to attend a permanency hearing when the child is of an age where attendance would be appropriate. Iowa Code § 232.91(4). When the child is excluded from the hearing, DHS is required to maintain a written record explaining why the child was excluded. *Id.* A statutory presumption exists that it is in the best interests of the child, when aged fourteen years or older, to attend the hearing. *Id.*

The juvenile court's ruling and the transcript are devoid of any discussion of the issue. There is no record of DHS having detailed why the children were excluded from the hearing. The State contends J.K. failed to preserve error on the issue, and we agree. Normally, an issue must be both presented to, and decided by, the district court for error to be preserved. *Benavides v. J.C. Penny Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). When a district court fails to rule on an issue properly submitted for adjudication, the party is required to file a rule

1.904(2) motion to preserve error. *State Farm Mut. Auto. Ins. Co. v. Pfilbsen*, 350 N.W.2d 202, 206–07 (Iowa 1984); Iowa R. Civ. P. 1.904(2). This also applies in juvenile court proceedings. *In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982). Not only did J.K. fail to raise the issue at the time of the hearing, but he also failed to file a rule 1.904(2) motion to preserve error on the issue. The issue was not preserved for our review.

J.K. also argues the juvenile court should have granted the parents an additional six months during which they could participate in other services. The juvenile court did not rule on this subject and J.K. did not file a rule 1.904(2) motion to request a ruling. For reasons previously stated, the issue was not preserved for our review.

B. Placement

Both parents argue the juvenile court did not act in the best interests of the children in ordering placement in a planned permanent living arrangement.³

Section 232.104(3) allows a permanency order when the juvenile court finds convincing evidence termination would not be in the best interests of the child, services were offered to correct the reasons for removal, and the child cannot be returned at the time. There is substantial evidence on each of these points in this case. A.K. and J.K. are making some progress towards correcting the reasons for removal, and services have been offered. The condition of the home continues to improve, and J.K. has begun attending therapy to address his problems. Work remains to be done, however, and returning the children to the

³ Because both parents presented substantially similar arguments, we address them in tandem.

home at this time would be inappropriate. The children are thriving in their current placement, their grades are improving, and progress has been seen on certain behavioral issues. Returning them to the home at this time would risk their continued progress and would not be in their best interests.

AFFIRMED.