

**IN THE COURT OF APPEALS OF IOWA**

No. 3-235 / 13-0075  
Filed March 27, 2013

**IN THE INTEREST OF T.S.,  
Minor Child,**

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

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

A father appeals the juvenile court decision terminating his parental rights.

**AFFIRMED.**

Matthew W. Boleyn of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Victoria Noel of Noel Law Firm, Maquoketa, for the mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Public Defender's Office, Dubuque, attorney for the child.

Considered by Vogel, P.J., Potterfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**MAHAN, S.J.****I. Background Facts & Proceedings.**

Justin and April are the parents of T.S., who was born in 2010. Justin has not had contact with the child since November 2010. The child was removed from the mother's care on April 7, 2011, due to her continuing substance abuse problems.

On April 11, 2011, the State filed a petition asserting T.S. was a child in need of assistance (CINA). The juvenile court ordered that Justin could be served by certified mail, return receipt requested, at his last known address. His last known address was a jail in Florida. The State sent notice of the removal and the CINA petition to him in the manner prescribed by the court.<sup>1</sup> An adjudication/disposition order was entered on May 31, 2011, finding T.S. was a CINA pursuant to Iowa Code section 232.2(6)(n) (2011).

Justin claims he was not aware of the child's involvement with the Iowa Department of Human Services until July or August of 2012. At that time he was in prison in Florida on drug-related charges. He asked the Department to conduct a home study of his sister in Florida, and the Department requested a study.

On November 14, 2012, the State filed a petition seeking to terminate the parents' rights. Justin asked for a continuance. The juvenile court denied his motion. April agreed to the termination of her parental rights. After a hearing, at

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<sup>1</sup> The record does not show Justin received the notice sent by the State. He asserts he was no longer in jail at the time the notice was sent. Justin did not file anything in the present case until after the petition for termination of parental rights had been filed.

which Justin appeared telephonically, the juvenile court terminated his parental rights under section 232.116(1)(h). The court noted that Justin did not dispute that the child could not be returned to his care at that time, but he was requesting additional time to work on reunification. The court concluded it was not in the child's best interests to further delay matters until Justin was released from prison and established a relationship with the child, whom he had not seen in over two years. Justin appeals the district court order terminating his parental rights.

## **II. Standard of Review.**

The scope of review in termination cases is *de novo*. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence, there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). "The paramount concern in termination proceedings is the best interest of the child." *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

## **III. Reasonable Efforts.**

Justin contends the Department did not make reasonable efforts to reunite him with his child. He asserts he should have been notified by the Department when the child was removed from the home. He states he was available to participate in services in April and May 2011, but no services were offered to him. He states that by the time he found out about the involvement of the Department,

in July or August 2012, he was incarcerated. He claims the Department should have done more to locate and notify him of the juvenile court proceedings.

The juvenile court did not address this issue. When the court does not address an issue, in order to preserve error a party must file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997). We conclude the issue was not preserved for our review and does not need to be addressed on appeal. See *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999).

We also note Justin does not state what additional or different services should have been offered to him or show he demanded these services prior to the termination hearing. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (“The Department has an obligation to make reasonable efforts towards reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing.”). For this reason as well, we conclude the issue of reasonable efforts has not been preserved for our review. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

#### **IV. Continuance.**

Justin asserts the juvenile court should have granted his motion to continue. He states he should be given more time to participate in services and work on reunification.

We review the juvenile court’s decision on a motion to continue for an abuse of discretion. *In re C.D.*, 508 N.W.2d 97, 99 (Iowa Ct. App. 1993). The

court's denial of the motion must be unreasonable under the circumstances before we will reverse. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). "We may look at a parent's past performance in determining whether a continuance of termination proceedings should be granted." *In re K.A.*, 516 N.W.2d 35, 37 (Iowa Ct. App. 1994).

The juvenile court determined granting an extension of time to the father would not be in the best interests of the child. The court noted the father expected to be released from prison in June 2013, but he still needed to establish a relationship with the child, whom he had not seen since November 2010. The court found the father would also need to participate in services before the child could be returned to his care. The court concluded such a delay in permanency would not be in the best interests of the child. We conclude the juvenile court did not abuse its discretion in denying Justin's request for a continuance.

We affirm the decision of the juvenile court.

**AFFIRMED.**