IN THE COURT OF APPEALS OF IOWA

No. 6-1049 / 06-1830
Filed January 31, 2007

IN THE INTEREST OF J.J.C.-V. a/k/a J.V. and C.S.C.,
Minor Children,

T.V., Father,
Appellant,

S.D.C., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother and father each appeal from a juvenile court order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Chad Douglas Primmer of Chad Douglas Primmer, P.C., for appellant-father.

Roberta J. Megel, Council Bluffs, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew J. Wilber, County Attorney, and J. Joseph Narmi, Assistant County Attorney, for appellee.

Aaron Rodenburg, Council Bluffs, guardian ad litem for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Sherry is the mother, and Thomas the father, of Colton and Janna (the children), who were seven and two years of age respectively at the time of an October 2006 termination of parental rights hearing. Sherry and Thomas each appeal from the resulting order terminating their parental rights to the children. We affirm on both appeals.

The children were removed from the physical custody of their parents in mid-2004. Colton was placed in the custody of the Iowa Department of Human Services (DHS) for placement in family foster care, where he has thereafter remained. Janna was initially placed in the custody of her paternal grandmother, subject to the supervision of the DHS, where she remained until January 2006. She was then placed in the custody of the DHS and joined Colton in family foster care where she has thereafter remained.

The children were adjudicated children in need of assistance (CINA) in August 2004, pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2003). Numerous services were thereafter provided and offered to Sherry, Thomas, and the children over the following two years. The State filed a petition in August 2006 seeking termination of parental rights. The juvenile court terminated Sherry's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (f) (Colton only), (h) (Janna only), and (i) (2005). It terminated Thomas's parental rights pursuant to sections 232.116(1)(d), (e), (f) (Colton only), (i) (Janna only), and (j). Sherry and Thomas appeal.

> 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

> 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).

Thomas claims his parental rights were improperly terminated pursuant to sections 232.116(1)(d) and (e), as well as certain other sections which were not in fact relied on by the juvenile court. He does not, however, challenge termination of his parental rights pursuant to sections 232.116(1)(f), (i), or (j), and we may thus affirm on those grounds. *See* Iowa R. App. P. 6.14(1)(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm."). We deem any issue concerning termination of Thomas's parental rights pursuant to sections 232.116(1)(f), (i), and (j) waived and affirm the juvenile court's termination of his parental rights to the children.

Sherry claims she did not receive reasonable time to rehabilitate herself, and reasonable efforts were not made to reunite her and her children. She asserts that the times for rehabilitation allowed by federal and state law are not realistic for parents, such as herself, with severe drug addiction problems. The State urges that Sherry has not preserved error on her claim.

Ordinarily, an issue must be both presented to and passed upon by the trial court before it may be raised and adjudicated on appeal. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). A motion pursuant to

Iowa Rule of Civil Procedure 1.904(2), seeking to enlarge or amend findings and conclusions of the trial court, is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984); *see also In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982) (holding rule 1.904(2) applicable to juvenile court termination of parental rights proceedings).

We view Sherry's claim as perhaps encompassing two separate and distinct claims, that (1) she did not receive reasonable time to rehabilitate herself, and (2) reasonable efforts were not made toward reunification.

Sherry asserts error was preserved by her denying the allegations of the petition for termination of her parental rights. We conclude such a general denial does not raise and present to the juvenile court such a specific issue, claim, defense, or legal theory as her present claim that she did not receive reasonable time to rehabilitate herself because the times allowed by federal and state law are inadequate for persons with severe drug addiction problems.[1] Furthermore, even assuming Sherry in fact raised that issue, the juvenile court did not address or pass upon it and Sherry did not pursue the matter by way of a rule 1.904(2) or other appropriate similar motion. We agree with the State that Sherry has not preserved error on that claim.

For two reasons we find Sherry entitled to no relief on her claim that reasonable efforts were not made toward reunification. While the State has an obligation to provide reasonable reunification services, the parent has an equal

[1] It is worth noting that Sherry's position at the termination hearing was that she in fact did not have a drug addiction problem.

obligation to demand any other, different or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). When the parent alleging inadequate services does not demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *S.R.*, 600 N.W.2d at 65; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Sherry makes no claim or showing that she demanded other, different, or additional services prior to the termination hearing. Because she did not raise this issue in the course of the juvenile court proceedings, we conclude it is not preserved for appeal.

Further, and assuming the issue is preserved, her claim is refuted by the record. Services were offered, and to the extent accepted were provided, to the family for two years or more. These services included random urinalysis for drug use, substance abuse evaluation, substance abuse treatment, family centered services, family skill/therapy sessions, foster family care, supervised visitation, couples' counseling, parenting classes, and a psychological evaluation. Sherry was to a significant extent not compliant with court ordered services, and was resistive to changing and improving her parenting abilities. The major problem preventing reunification was not a failure of reasonable efforts toward reunification, but rather was Sherry's failure or refusal to avail herself of and benefit from necessary and offered services. We find the State made reasonable efforts toward reunification and Sherry's claim to the contrary is without merit.

AFFIRMED ON BOTH APPEALS.