

IN THE COURT OF APPEALS OF IOWA

No. 6-359 / 06-0465

Filed May 10, 2006

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

M.A.T., Father,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father appeals from the order terminating his parental rights to his daughter. **AFFIRMED.**

Esther Dean, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee.

Mark Neary, Muscatine, for intervenors-maternal great-grandparents.

Douglas Johnston, Muscatine, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Mark, the biological father of Serah,¹ appeals from the juvenile court order terminating his parental rights.² He contends the State failed to present clear and convincing evidence supporting termination under Iowa Code sections 232.116(1)(e) (2005) (significant and meaningful contact) and (h) (cannot safely be returned to parent's custody), and that termination was unnecessary under section 232.116(3) because the child was in the custody of a relative. We affirm.

Our review is de novo. Iowa R. App. P. 6.4; *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We are not bound by the court's findings of fact, but give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Forbes*, 570 N.W.2d 757, 759 (Iowa 1997); see Iowa R. App. P. 6.14(6)(g). When a juvenile court terminates a parent's rights on more than one statutory ground, we need only find termination proper on one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Mark has a history of problems with anger. He admitted he was diagnosed with explosive temperament disorder. He has a conviction for assault. He quit a truck-driving job because of road rage. He started counseling for anger management in April of 2005 but failed to continue therapy after the permanency order directed the State to initiate termination proceedings. The permanency order notes: "It requires a great deal of patience to parent a young child. The

¹ Mark was forty-one years old and the mother was seventeen years old when Serah was born in 2004. The mother's husband, Serah's legal father, was in prison when Serah was born.

² The parental rights of the mother and legal father also were terminated, but they did not appeal.

fact that [Mark] could not handle operating a vehicle causes the court great concern that he could become upset, frustrated, or angry when parenting a child.” At the termination hearing in March of 2006 he was unable to complete his testimony, even after a break, because of his anger. After quoting from the permanency order concerning Mark’s problems with anger, the court found:

[Mark] exhibited these characteristics while testifying. He is not prepared from an emotional and mental standpoint to parent a child. It is clear to the court that he would have difficulty dealing with the day-to-day requirements of being a parent. He would become upset, frustrated, or angry with the child and the child would be subject to abuse or neglect. While [Mark] did not speak, his demeanor spoke volumes. [Mark] appeared as if he would explode at any moment.

Mark told one service worker that, once he’s angry, his anger can last for up to two weeks. During his substance abuse, mental health, and psychosocial evaluations Mark spoke frequently about physical confrontations with others. He boasted of being able to control the behavior of others with his anger and aggression. During supervised visitation with Serah, he referred to her as a “poop stain” and “little sh-t,” giving evidence of how easily he can become frustrated with her.

Although the guardian ad litem’s report described Mark’s mobile home as “adequate,” Mark testified it was old and needed a lot of work. Photographs of the mobile home show debris that could pose a risk to Serah.

The case permanency plan required Mark to abstain from illegal drugs and alcohol. During the permanency hearing, he lied about his consumption of alcohol.

Mark changed residences three times during the pendency of this case. His employment and income are not stable.

We find clear and convincing evidence Serah could not be placed in Mark's custody at the time of the termination hearing without being subject to adjudicatory harm. We affirm the termination of his parental rights under section 232.116(1)(h).

Throughout the pendency of this case, Serah has been in the care of her maternal great-grandparents. Citing section 232.116(3), Mark argues terminating his parental rights was "unnecessary and unwarranted" because the court could have established a guardianship with the great-grandparents. The State contends this issue was not raised in the juvenile court and is not preserved for our review. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (stating an issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions). From our review of the record, we do not find this issue raised in or decided by the juvenile court. Consequently, it is not preserved on appeal and we do not address it.

AFFIRMED.