

IN THE COURT OF APPEALS OF IOWA

No. 6-596 / 06-0948
Filed August 9, 2006

**IN THE INTEREST OF A.B.-T.,
Minor Child,**

W.B., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

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

AFFIRMED.

Aaron H. Ginkens of Ginkens Law Firm, P.C., West Des Moines, for
appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Annette Stanley,
Assistant County Attorney, for appellee State.

Brent Hinders and Jeffrey Carter of Carter Law Firm, Des Moines, for
mother.

Nicole Garbis Nolan, Youth Law Center, Des Moines, guardian ad litem for
minor child.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

PER CURIAM***I. Background Facts & Proceedings.***

Willie is the father of Andrea,¹ who was born in May 2004. In February 2005, Andrea was removed from her mother's care after the child was hospitalized with seizures from ingesting methamphetamine. At the time of the removal both parents tested positive for marijuana. Andrea was soon placed with a maternal grand-aunt and uncle where she remained throughout these proceedings.

Andrea was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (2005) (parent is imminently likely to neglect child), (c)(2) (child is likely to suffer harm due to parent's failure to supervise), and (o) (illegal drug present in child). The parents were ordered to have substance abuse evaluations, provide drug tests, and cooperate with in-home services.

Willie did not follow the court's orders or participate in any services. He appeared at the removal hearing in March 2005, and made no further court appearances during the CINA proceedings. Willie was in jail from October to November 2005 on a domestic abuse charge, and then from January to April 2006 for probation violations.

In February 2006, the State filed a petition seeking termination of the parents' rights. Willie appeared at the termination hearing in April 2006. He testified he was waiting to move to a work-release program, where he would

¹ The mother did not appeal the termination of her parental rights.

likely remain for another three months. He stated he did not participate in services because he trusted that Andrea's mother would take care of their child.

The juvenile court terminated both parents' rights under sections 232.116(1)(b) (abandonment), (d) (child CINA for neglect, circumstances continue despite the receipt of services), (e) (child CINA, removed for six months, parent has not maintained significant and meaningful contact), (h) (child is three or younger, CINA, removed for at least six months, and cannot be returned home), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). The court found, "Neither parent complied with the services offered and ordered." Willie appeals.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interest of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Best Interests.

Willie contends termination of his parental rights is not in Andrea's best interests. On our de novo review, we find termination is in the child's best interests. Willie did not participate in any services offered, and by his actions has shown a lack of interest in his child. He has not yet addressed his own problems, including domestic abuse and substance abuse. Andrea should not be forced to

wait any longer for permanency, as patience with parents can soon lead to intolerable hardship for a child. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

IV. Imprisonment.

Willie asserts that his parental rights should not be terminated just because he is imprisoned. He relies upon section 232.116(3)(e), which provides that the juvenile court need not terminate parental rights if a parent is absent “due to the parent’s admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.”

We first note that the juvenile court did not address this issue, and therefore error has not been preserved. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (finding that an issue not presented in the juvenile court may not be raised for the first time on appeal). Even if the issue were preserved, however, section 232.116(3)(e) is not applicable in this case. The term “institution” in this section does not include a penal institution. *In re J.S.*, 470 N.W.2d 48, 51 (Iowa Ct. App. 1991); *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990).

We conclude Willie’s parental rights were properly terminated by the juvenile court, and such is in Andrea’s best interests.

AFFIRMED.