

IN THE COURT OF APPEALS OF IOWA

No. 6-597 / 06-0982

Filed August 9, 2006

**IN THE INTEREST OF S.J. and A.J.,
Minor Children,**

**A.R.J., JR., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A father appeals from a juvenile court order terminating his parental rights
to two children. **AFFIRMED.**

Catherine Alexander, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, William Davis, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee State.

John O. Moeller, Davenport, for appellee mother.

Timothy Tupper, Davenport, guardian ad litem for minor child.

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

MILLER, J.

Bethia is the mother, and August the father, of Amber and Skye (the children) who were four and two years of age respectively at the time of a termination of parental rights hearing. August appeals from a June 2006 juvenile court order terminating his parental rights to the children. The order also terminated Bethia's parental rights, and she has not appealed. We affirm.

The children first came to the attention of the Iowa Department of Human Services (DHS) in early January 2005. Skye had been diagnosed with ringworm in October 2004 but remained untreated for a time because Bethia and August did not initially secure prescribed medication and treat the condition. Shortly thereafter the DHS began an investigation of suspected physical abuse, and possible sexual abuse, of Amber by August. August sold the family trailer, took the family car, disposed of or took most of the parties' other property and money, and disappeared.

In April 2005 the children were removed from Bethia's physical custody for suspected abuse by Bethia's boyfriend. They were placed in the legal custody of the DHS for family foster care, a status in which they have thereafter remained. In August 2005 the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) (2005), (e), and (n). In February 2006 the children's guardian ad litem filed a petition seeking termination of parental rights. Following a May 2006 hearing the juvenile court terminated August's parental rights as to both children pursuant to Iowa Code sections 232.116(1)(b) and (e), as to Amber pursuant to section 232.116(1)(f), and as to Skye pursuant to section 232.116(1)(h). August appeals.

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).

August first claims he was not given a reasonable time to address case plan goals. More specifically, he contends the three months from the time he received formal notice of the child in need of assistance proceeding to the permanency hearing and order directing the filing of a petition to terminate parental rights was an inadequate period of time, resulting in a lack of reasonable efforts by the State to reunify the children with him. The State argues he has not preserved error on this issue, and the guardian ad litem argues the State did make reasonable efforts.

While the State had an obligation to provide reasonable reunification services, August had the 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). August's only request was for telephone contact with the children, which was reasonably denied because he refused to have in-person contact with them despite the fact he had been totally absent from their lives for so long they would not be likely to know who he was, and because neither Amber nor Skye were yet "verbal." We agree August has not preserved error on this issue.

Further, August was requested and encouraged to visit with the children, but refused to do so. Although he completed a parenting class in Montana, to which he had at some undisclosed time moved, the program manager for that

class reported that August was argumentative during class and was not very eager to receive and process information regarding parenting techniques. The manager also reported that August was not responsive to suggestions that he begin counseling to become familiar with issues the children would be facing as they matured and to learn what he might do to help them successfully cope and mature. We thus further conclude the State in fact offered services, but August failed or refused to take appropriate advantage of them.

As an additional "issue" August argues his current unavailability as a parent derives from pending criminal charges in another state, he enjoys a constitutional presumption of innocence, and that presumption should shield him from the loss of his parental rights. He cites as authority only Iowa Code section 701.3.

In February 2005 the DHS began investigating suspected physical abuse, and possible sexual abuse, of Amber by August. There were also concerns he had engaged in domestic abuse of Bethia. August abandoned Bethia and the children and absconded. During the abuse investigation Bethia reported that there then existed an Illinois felony warrant for August's arrest for unrelated sexual molestation. August apparently left Iowa and resided in different locations, including Nebraska and ultimately Montana.

The State made numerous, unsuccessful attempts to locate August and serve him with notice of the CINA proceedings before finally locating him in Montana and serving him in November 2005. Meanwhile, in August 2005 August had been indicted in Illinois for aggravated criminal sexual abuse of a minor, a felony. He was arrested on a fugitive warrant in Montana in January 2006 and

was subsequently extradicted to Illinois where he was incarcerated at the time of the termination hearing.

The nature of this claim by August of juvenile court error is very unclear. As best we understand it, he contends termination of his parental rights was improper because his unavailability to parent the children was based upon his incarceration for a pending felony charge and termination would thus violate his constitutional right to a presumption of innocence.

August abandoned Bethia and the children and disappeared in February 2005, a full year before the February 2006 permanency hearing and resulting order that termination proceedings be started, and more than fifteen months before the ensuing termination hearing. He thereafter for months took no steps to let Bethia or the DHS know where he was, sent no cards, pictures, or money, and made no attempts to contact the children, other than the request for telephone contact that he made many months later. August had abandoned the children long before he was indicted, arrested, extradicted, or held in Illinois. Although the children clearly could not be "returned" to him at the time of the termination hearing, the termination of his parental rights was not in any manner a result of a violation of his right to a presumption of innocence on the felony charge pending against him. We find this claim of juvenile court error to be entirely without merit.

AFFIRMED.