

IN THE COURT OF APPEALS OF IOWA

No. 6-859 / 06-1283
Filed October 25, 2006

IN THE INTEREST OF I.M., Minor Child,

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,
District Associate Judge.

A mother appeals from a juvenile court order terminating her parental
rights to one child. **AFFIRMED.**

Jolie Juckette of Nelissen & Juckette, P.C., Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jess Vilsack, Assistant
County Attorney, for appellee.

Stephie Tran, Des Moines, for father.

Kathryn Miller, Des Moines, guardian ad litem for minor child.

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

MILLER, J.

Jamie is the mother of Iziah, born in February 2005. Jamie appeals from a July 2006 juvenile court order terminating her parental rights to Iziah. The order also terminated the parental rights of Iziah's father, who has not appealed. We affirm.

In terminating Jamie's parental rights the juvenile court found the State had proved each of the statutory grounds for termination as set forth in Iowa Code sections 232.116(1)(b), (d), (e), and (h) (2005). Jamie claims there was insufficient evidence presented to support termination under any one or more of those provisions. She also claims termination is not in Iziah's best interest.

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).

When the trial court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the provisions relied on by the trial court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We choose to focus on sections 232.116(1)(d) and (h).

Iziah was removed from the physical custody of his parents in June 2005 and placed in the custody of his paternal grandmother, under the supervision of the Iowa Department of Human Services (DHS). Circumstances leading to the removal included the parents' untreated mental health problems, homelessness, and resulting inability to provide for even themselves, much less Iziah. The

juvenile court ordered that the parents be provided bus tokens in order that they be able to participate in services. It ordered in-home services, parenting classes, psychiatric evaluations, and drug testing at DHS discretion.

Iziah was adjudicated a child in need of assistance (CINA) in August 2005. The adjudication was made pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child, or is imminently likely to do so); (c)(2) (failure of parent to supervise child); and (n) (parent's mental capacity or condition or drug use results in child not receiving adequate care). The juvenile court continued Iziah's custodial status. In addition to previous services it ordered in-home therapy, psychosocial evaluations, and protective daycare. In an October 2005 dispositional order the court noted the parents' continuing unresolved mental health issues and lack of appropriate housing. It placed Iziah in the custody of his paternal grandparents, where he has thereafter remained.

Jamie has been diagnosed as suffering from seizures, bi-polar affective disorder, and depression. She has a history of cutting herself, using drugs, and entering domestically violent relationships. Jamie has refused to have a psychosocial evaluation. She declines to take medications prescribed for her mental health problems, believing she functions better without them. Jamie has failed or refused to participate in required drug testing. During the one-year pendency of the CINA proceeding Jamie at most times indicated she wished to have her parental rights terminated, and exercised only three visitations with Iziah. The evidence does not indicate that she has stable housing or employment, or that she has attempted to deal with and control her mental health problems. Although Jamie attended the termination hearing she presented no

evidence in resistance to termination, stating through counsel that she “does not intend to present any independent evidence today, and would request the court make its ruling based on the exhibits” that had been introduced in evidence.

To prove one of the grounds for termination the State was required to prove: (1) Iziah had been adjudicated a CINA based on abuse or neglect by a parent or parents, and (2) Iziah’s parents were offered or received services to correct the circumstance which led to the adjudication, but the circumstance continued to exist. Iowa Code § 232.116(1)(d). To prove another of the grounds for termination the State was required to prove: (1) Iziah is three years of age or younger, (2) he had been adjudicated a CINA, (3) he had been removed from the physical custody of his parents at least six of the last twelve months, and (4) he could not be returned to his parents without remaining a CINA. Iowa Code § 232.116(1)(h).

In its termination ruling the juvenile court found, in part:

[N]either parent has maintained appropriate[,] consistent contact with [Iziah] nor have they addressed the issues which initially brought this family to the attention of the court. There has been no progress in this case and we are in exactly the same position as when this case started.

These findings are fully supported by the record, we agree with them, and we adopt them. We conclude the State proved the statutory grounds for termination of Jamie’s parental rights under both sections 232.116(1)(d) and (h).

Jamie claims termination of her parental rights is not in Iziah’s best interest, citing Iowa Code section 232.116(3)(a), which provides that the court need not terminate the parent-child relationship if a relative has legal custody of the child. However, no such issue was presented to or passed upon by the

juvenile court, and Jamie did not raise it by a post-ruling motion in the juvenile court. We conclude error has not been preserved on this issue and do not further address it. See *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993) (holding a matter not raised in the trial court cannot be asserted for the first time on appeal); see also *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (holding a motion pursuant to what is now Iowa Rule of Civil Procedure 1.904(2) is essential to preservation of error when a trial court does not resolve an issue).

Jamie's claim concerning Iziah's best interest may arguably be seen as a more general claim that does not rely solely on section 232.116(3)(a). Iziah was fifteen months of age at the time of the termination hearing. He had been out of Jamie's custody for just short of a full year and she had hardly any contact with him during that time. Jamie could not resume his custody at the time of the hearing or within the reasonably foreseeable future. From Jamie's complete failure or refusal to cooperate with necessary and required services it appears highly unlikely she would ever be able to resume his custody. Iziah had been in the custody and care of his paternal grandparents for a year, was doing well, and the grandparents were ready, willing, and apparently able to adopt him. He needs and deserves the stability, security, and permanence that termination of parental rights and adoption can provide him. We find, as the juvenile court did, that termination of Jamie's parental rights is in Iziah's best interest.

AFFIRMED.