

IN THE COURT OF APPEALS OF IOWA

No. 7-527 / 07-0996
Filed October 12, 2007

**IN THE INTEREST OF A.J.J. AND J.J.A.D.,
Minor Children,**

J.C., Father,
Appellant,

D.J., Mother,
Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A father and mother appeal the termination of their parental rights.
AFFIRMED.

Jeffrey L. Powell of Tindal & Kitchen, P.L.C., Washington, for appellant father.

Kathryn J. Salazar of Day, Meeker, Lamping, Schlegel & Salazar, Washington, for appellant mother.

Sue Kirk, Iowa City, for mother of J.J.A.D.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee State.

Katie McConnell of Lloyd, McConnell & Davis, L.L.P., Washington, guardian ad litem for minor child.

Considered by Huitink, P.J., Vogel, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9606 (2007).

NELSON, S.J.**I. Background Facts & Proceedings**

J.C. and S.M. are the parents of J.J.A.D., who was born in 1992. J.C. and D.J. are the parents of A.J.J., who was born in 1998. S.M., the mother, has not been active in the life of J.J.A.D., and he lived with J.C., his father. In 2005 A.J.J. was sexually abused by D.J.'s paramour. In investigating that incident, the Iowa Department of Human Services (Department) discovered another man living in the home, J.S., had a history of sexually abusing children. Despite warnings from the Department, J.C. and D.J. continued to allow the children to have contact with J.S., stating they had known him for many years and did not think he was a danger to the children.¹ The children were removed from the care of J.C. and D.J. in February 2006 and placed in foster care.

On April 6, 2006, J.J.A.D. and A.J.J. were adjudicated to be children in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2005). The dispositional order was entered on May 10, 2006. The parents were ordered to participate in family-centered services, participate in a social history, obtain mental health evaluations, and complete a psychosocial evaluation.

After the children were removed J.C. and D.J. established separate households. In the past there were concerns that J.C. and D.J. allowed unrelated adults, who they did not know much about, to live in their homes. There were also concerns about cleanliness in the home. Both parents were

¹ J.S. was previously married to S.M., the mother of J.J.A.D., and he was considered an uncle to the children.

unemployed. Neither parent had a driver's license. The parents were inconsistent in attending visitation.

A psychosocial evaluation found J.C.'s "current health condition and decision-making capabilities raise significant concerns for his sons' success in the home." A psychological report found J.C. had a probable antisocial personality disorder and noted his long history of associating with persons who could occasion risk to his children. The report found it was unlikely J.C.'s "parenting strategy would be successful in providing the children with the structure necessary for effectively meeting their needs without a great deal of guidance and supervision."

A psychosocial report of D.J. found it was doubtful she could provide a safe environment for her son. D.J. has serious health problems. She does not always have electricity, running water, or heat for her home. The psychological report for D.J. showed she was at the borderline range of intellectual functioning. The report found D.J. was unlikely to be able to meet the changing needs of a developing child.

In August 2006 A.J.J. was placed in a psychiatric hospital for children due to aggressive behavior. He was diagnosed with attention deficit hyperactivity disorder and a conduct disorder. He then returned to foster care. J.J.A.D. was also evaluated, and he was diagnosed with an adjustment disorder.

In January 2007 the State filed a petition seeking termination of the parental rights of J.C. and D.J. While the termination case was pending, A.J.J.'s behavior deteriorated, and in April 2007 he was placed in a pediatric medical

facility for children. The juvenile court issued a decision in the termination case on May 30, 2007. The court terminated the parental rights of J.C. and D.J. under section 232.116(1)(f) (2007).² The court found, “It would be contrary to the children’s welfare to return them to the home of any of the parents.” J.C. and D.J. appeal the termination of their parental rights.

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). 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 interests of the children. *In re C.V.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Father

A. J.C. contends there is not clear and convincing evidence in the record to support the juvenile court’s termination of his parental rights under section 232.116(1)(f). This section provides for termination if all the following have occurred: (1) the child is four or older; (2) the child has been adjudicated CINA; (3) the child has been removed for at least twelve months; and (4) the child cannot be safely returned to the custody of the child’s parents. Iowa Code § 232.116(1)(f). J.C. claims there is insufficient evidence to show the children could not be returned to his care.

We find clear and convincing evidence to show the children could not be safely placed in J.C.’s care. The evidence showed J.C. did not recognize risks to

² The parental rights of the mother of J.J.A.D., S.M., were also terminated. She has not appealed.

the children and would be unlikely to protect his children from harm. J.C. did not take any steps to improve his parenting skills. He did not pay attention to the services offered to him, sometimes playing video games or sleeping while social workers came to his house. Furthermore, cleanliness and hygiene continued to be a problem in the father's home. We conclude J.C.'s parental rights were properly terminated under section 232.116(1)(f).

B. J.C. also claims termination of his parental rights was not in the children's best interests. "[T]he court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). As noted above, J.C.'s lack of interest in improving his parenting skills shows a lack of interest in his children. J.C. remains unable to meet the children's needs. Termination of his parental rights is in the children's best interests.

IV. Mother

A. D.J. contends it is not in the best interests of A.J.J. to terminate her parental rights. D.J. relies upon section 232.116(3)(c), which provides the juvenile court need not terminate parental rights if termination would be detrimental to the child due to the closeness of the parent-child relationship. The juvenile court did not discuss this code section, and we conclude the argument based on it has not been preserved. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting we do not consider issues raised for the first time on appeal).

Furthermore, considering the evidence as a whole, we find it is in A.J.J.'s best interests to terminate D.J.'s parental rights. D.J. does not recognize the risk to A.J.J. presented by unknown adults living in her home. She has not improved her parenting skills. In addition, her housing situation is not stable; often she is living without electricity, running water, or heat in her home. The record shows A.J.J. has special needs due to his behavioral problems. D.J. is unable to give A.J.J. the structure and stability he needs.

B. Finally, D.J. asserts the State did not engage in reasonable efforts to reunite her with A.J.J. D.J. claims the Department did not adjust its services to take into account her intellectual limitations. She also claims she should have been given more opportunities to implement new parenting skills with A.J.J.

The State has the obligation to make reasonable efforts, but it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). It is too late to challenge the service plan at the termination hearing, or later. *See In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999). The record in this case does not show D.J. requested additional or different services prior to the termination hearing. We conclude D.J. has failed to effectively raise this issue for our review.

We conclude the juvenile court properly terminated J.C.'s parental rights to J.J.A.D. and A.J.J. and D.J.'s parental rights to A.J.J.

AFFIRMED.