

IN THE COURT OF APPEALS OF IOWA

No. 7-888 / 07-1774
Filed December 12, 2007

IN THE INTEREST OF M.K.B.,
Minor Child,

A.M.N., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

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

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

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

Gregory Greiner of Greiner Law Office, P.C., Des Moines, for father.

Mary Miller, Juvenile Public Defender, Des Moines, guardian ad litem for minor child.

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

MILLER, J.

Ashley appeals from an October 2007 juvenile court order terminating her parental rights to her daughter Miranda, who was about thirty months of age at the time of an August 2007 termination hearing. The order also terminated the parental rights of Miranda's father, and he has not appealed. We affirm.

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).

The juvenile court terminated Ashley's parental rights pursuant to Iowa Code sections 232.116(1)(d) (2007) (child adjudicated child in need of assistance (CINA) for abuse or neglect by parent; circumstance which led to adjudication continues despite offer or receipt of services) and 232.116(1)(h) (child three or younger; adjudicated CINA; removed from parents six of last twelve months, or last six months with any trial period at home less than thirty days; cannot be returned to parents without remaining a CINA). On appeal Ashley asks: (1) whether termination of her parental rights is in Miranda's best interest, (2) whether termination of her parental rights was proper given the closeness and bond of the parent-child relationship, and (3) whether termination of her parental rights was proper and in Miranda's best interest given that Miranda is placed with maternal relatives. The second and third of these issues implicate an exercise of juvenile court discretion pursuant to Iowa Code sections 232.116(3)(c) and 232.116(3)(a) respectively.

A review of the filings in the termination case, the transcript of the termination hearing, and the juvenile court's resulting order reveals that although Ashley raised the question of the closeness of the parent-child bond in her written answer and affirmative defenses and in closing argument, the issue was not addressed or ruled on by the juvenile court or pursued by way of a post-ruling motion. Our review further reveals that no claim or issue regarding placement with relatives was presented to the juvenile court, passed upon by the court, or pursued by way of a post-ruling motion. We conclude error was not preserved on those two issues that Ashley now attempts to present on appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal."); *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993) ("Matters not raised in the trial court, including constitutional questions, cannot be asserted for the first time on appeal."). A motion pursuant to Iowa Rule of Civil Procedure 1.904(2) (formerly 179(b)) is essential to the preservation of error when a trial court does not resolve an issue. *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984). Because error was not preserved on these two issues we decline to address the merits, or lack of merits, of those issues.

"Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the child." *In re M.S.*, 519 N.W.2d 398, 400 (Iowa Ct. App. 1994). We proceed to address the first of the three questions raised by Ashley.

Miranda was removed from Ashley's legal and physical custody in early August 2006 when eighteen-month-old Miranda and nineteen-year-old Ashley were found in a van that is apparently accurately described as a "rolling methamphetamine lab." Ashley has mental health issues. She has a significant history of substance abuse, having started using marijuana at age thirteen and methamphetamine at age sixteen. During the underlying CINA proceeding Ashley was offered a plethora of services. She failed or refused to take advantage of many of them, and was inconsistent in participating in all others except parenting classes.

Pursuant to a case plan, Ashley was to secure and maintain employment. In the year between the commencement of the CINA case and the hearing in the termination case she worked only three weeks, left that job voluntarily, and was unemployed at the time of the termination hearing.

Ashley failed or refused to participate in individual counseling for her mental health problems. She was to participate in substance abuse treatment. She signed up for three separate treatment programs, failed to begin one of the three, and unsuccessfully participated in and left the other two.

Related to her substance abuse, Ashley was to provide specimens for drug testing. She failed or refused to do so on all but twelve of fifty-four scheduled occasions. On several of the occasions that she did provide specimens she tested positive for drug use. These positive tests included a January 2007 positive for methamphetamine, five months into the CINA case, and a July 2007 positive for marijuana use, eleven months into the CINA case and after the petition for termination of her parental rights had been filed.

As of the termination hearing it was clear that Miranda could not be returned to Ashley's care within the foreseeable future. The record at the hearing leaves doubt as to whether Ashley will at any future time be able to provide for Miranda safely.

At the time of the termination hearing thirty-month-old Miranda had been removed from Ashley for over a year. She had been in the custody and care of Ashley's maternal aunt and uncle for ten months. Miranda had very little if any bond with Ashley. Miranda was closely bonded to and thriving in the care of her maternal great aunt and uncle, who wish to and intend to adopt her if allowed to do so.

Miranda needs and deserves the security, stability, and permanency that termination of Ashley's parental rights will allow and that without termination she will not have. We find, as the juvenile court did, that termination of Ashley's parental rights is in Miranda's best interest.

AFFIRMED.