

IN THE COURT OF APPEALS OF IOWA

No. 9-203 / 09-0209
Filed April 8, 2009

**IN THE INTEREST OF I.F., JR.,
Minor Child,**

**G.R.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

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

John E. Swartz, Des Moines, for appellant.

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

Kimberly Ayotte, Des Moines, attorney and guardian ad litem for minor child.

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

MILLER, J.

A mother, G.G., appeals from a January 22, 2009 juvenile court order terminating her parental rights to her five-year-old son, I.F. Jr. (The order also terminated the parental rights of I.F. Jr.'s father, I.F. Sr., on the ground of abandonment, and he has not appealed.) We affirm.

The juvenile court terminated G.G.'s parental rights pursuant to Iowa Code sections 232.116(1)(d) (2007) (child previously adjudicated a child in need of assistance for abuse or neglect by parent or parents, circumstance continues despite offer or receipt of services), (e) (child adjudicated a child in need of assistance, child removed from parent for at least six consecutive months, parent has not maintained significant and meaningful contact with the child), and (f) (child adjudicated a child in need of assistance; parent has a severe, chronic substance abuse problem and presents a danger to self or others; parent's prognosis indicates child cannot be returned to parent within a reasonable period of time). G.G. does not claim the State did not prove these grounds for termination of her parental rights. She claims the juvenile court erred in terminating her parental rights due to (1) "the placement of [I.F. Jr.] with a relative," and (2) "the closeness of the parent-child relationship."

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).

G.G.'s first claim implicates Iowa Code section 232.116(3)(a), which provides that the court need not terminate the parent-child relationship if it finds a relative has legal custody of the child. The provisions of section 232.116(3) are permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). "It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section." *Id.* Courts must consider both the child's long-range and immediate best interests. *Id.*

I.F. Jr. was removed from the legal custody of G.G. on or about April 17, 2008. He was placed in the legal custody of a maternal uncle and aunt, subject to supervision by the Iowa Department of Human Services, a status that continued through the January 2009 termination hearing and resulting order. In addressing this issue the juvenile court quoted *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) for the proposition that "[a] child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."

The juvenile court concluded, in part, that:

At this point [I.F. Jr.'s] mental and emotional well-being are in a fragile state. To heal and move on he must have permanency. Anything short of termination, even though he is in his aunt and uncle's care[,] would not provide that permanency. [I.F. Jr.'s] needs trump the relative placement here. Termination is in his best interest even though he is with family members.

These conclusions are fully supported by the record and we adopt them. When removed from G.G., I.F. Jr. had been traumatized by the environment she had provided. Therapy was required because he was emotionally shut down,

hypervigilant, guarded in communication and about people, and concerned about his safety and survival. Through therapy and the safety and security of his custody with relatives he had begun to be more communicative, open, and trusting, but had only started to address his fears and concerns. I.F. Jr.'s therapist strongly recommended termination of G.G.'s parental rights, opining that a return to G.G. would cause I.F. Jr. to decompensate and lose the needed progress he had made. I.F. Jr.'s guardian ad litem also recommended termination of G.G.'s parental rights.

We agree with the juvenile court on this issue and conclude it did not abuse its discretion by not giving greater weight to I.F. Jr.'s placement with relatives.

G.G.'s second claim of juvenile court error implicates Iowa Code section 232.116(3)(c), which provides that the court need not terminate parental rights if it finds clear and convincing evidence that termination would be detrimental to the child due to the closeness of the parent-child bond. However, a review of the record reveals that (1) this issue was not presented to and passed upon by the juvenile court, and (2) failure, if any, by the court to address this issue was not pursued by way of a post-ruling motion.

“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 K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). “Matters not raised in the trial court, including constitutional questions, cannot be asserted for the first time on appeal.” *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). A motion pursuant to Iowa Rule

of Civil Procedure 1.904(2) is essential to the preservation of error when the 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). We conclude that error was not preserved on this issue G.G. now attempts to present on appeal, and decline to address it further.

Upon our de novo review we agree with the juvenile court that termination of G.G.'s parental rights is in I.F. Jr.'s best interest, and thus affirm the judgment of the juvenile court.

AFFIRMED.