

**IN THE COURT OF APPEALS OF IOWA**

No. 9-252 / 09-0292  
Filed April 22, 2009

**IN THE INTEREST OF G.S.,  
Minor Child,**

**A.J., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

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

Theodore R. Stone, Cedar Falls, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee.

Mary Kennedy, Waterloo, for father.

Linnea Nicol, Waterloo, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Miller and Doyle, JJ.

**MILLER, J.**

A.J. is the mother of G.S., who was twenty months of age at the time of a January 2009 termination of parental rights hearing. A.J. appeals from a February 13, 2009 juvenile court order terminating her parental rights to G.S. (The order also terminated the parental rights of G.S.'s father, who consented to termination of his rights and has not appealed.) We affirm.

G.S. was born when A.J. was just short of sixteen and one-half years of age. At some time during the first six months of G.S.'s life she developed or manifested a serious seizure disorder, one that can be life-threatening. G.S. was removed from A.J.'s physical custody when G.S. was about seven months of age and A.J. was a month from her seventeenth birthday. The removal was occasioned by A.J.'s failure to obtain and administer prescription anti-seizure medicine that G.S. needs, resulting in G.S. suffering severe seizures and being "life-flighted" to the University of Iowa Hospitals and Clinics. In the ensuing thirteen months G.S. has remained in the legal custody the Iowa Department of Human Services (DHS), placed in family foster care.

For the thirteen months from removal to the termination hearing A.J. has been offered, and to the extent she has been willing to do so has received, a myriad of services. Her participation has been somewhat inconsistent. She has at times been resistant to some of the offered services. A.J. is unable or unwilling to effectively interact and communicate with the professionals who provide G.S.'s medical care, is unable to articulate G.S.'s medical needs, and appears to lack an understanding of those needs.

The juvenile court held a termination of parental rights hearing shortly after A.J.'s eighteenth birthday. It terminated A.J.'s parental rights pursuant to Iowa Code sections 232.116(1)(e) (2009) (child adjudicated a child in need of assistance (CINA), child removed from parents at least six consecutive months, parent has not maintained significant and meaningful contact and has made no reasonable efforts to resume care of the child) and 232.116(1)(h) (child three or younger, adjudicated CINA, removed from parents six of last twelve months, cannot be returned at present time). A.J. 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).

A.J. claims reasonable efforts were not made to address the fact she was a minor and "dependent on her mother who made all the decisions." More specifically, she claims the DHS should have sought to have her found to be a CINA. For several reasons we find A.J. entitled to no relief on this claim.

First, we conclude that A.J. has not preserved error on this claim. "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). "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). A motion pursuant to Iowa Rule of Civil

Procedure 1.904(2) 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). As urged by the State, although A.J. through counsel raised this issue with the DHS, the record before us does not demonstrate that the issue was addressed or resolved by the juvenile court.

In addition, the record simply does not support A.J.'s apparent assertion that A.J.'s mother made or controlled decisions concerning G.S.

Finally, the record affirmatively demonstrates that the DHS considered, but found no grounds to support, seeking to have A.J. adjudicated a CINA; an adjudication of A.J. as a CINA would not have made any further or additional services available to her; and any services that could have been provided to A.J. if adjudicated a CINA were offered and made available to her.<sup>1</sup>

A.J. also claims that the absence of a guardian ad litem for her, together with what she claims to be the absence of reasonable efforts to have her adjudicated a CINA, deprived her of her constitutional right to "Equal Protection under the law." A.J. has not preserved error on such a claim, as no such claim was presented to or ruled on by the juvenile court.

Upon our de novo review, we affirm the judgment of the juvenile court.

**AFFIRMED.**

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<sup>1</sup> A.J. claims in the alternative that a guardian ad litem should have been appointed for her. We note that A.J. was just one month short of her seventeenth birthday at the time of G.S.'s removal, an attorney was appointed for her and zealously represented her, and the record does not demonstrate any substantial reason why a guardian ad litem should also have been appointed for her.