

**IN THE COURT OF APPEALS OF IOWA**

No. 9-409 / 09-0620

Filed June 17, 2009

**IN THE INTEREST OF E.F. and K.F.,  
Minor Children,**

**G.J., Mother,**  
Appellant,

**Z.K., Father,**  
Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Peter B. Newell, District Associate Judge.

Parents appeal the juvenile court order terminating their parental rights.

**AFFIRMED.**

Marilyn J. Dettmer of Dettmer Law Office, Charles City, for appellant mother.

Rodney E. Mulcahy of Eggert, Erb & Mulcahy, P.L.C., Charles City, for appellant father of E.F.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Shawn Showers, Assistant County Attorney, for appellee State.

Douglas Grabinski, Clear Lake, for father of K.F.

David Grooters of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, guardian ad litem for minor children.

Considered by Potterfield, P.J., and Doyle, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**PER CURIAM****I. Background Facts & Proceedings**

Gemini and Anthony are the parents of Kaylee, born in 2007. Kaylee came to the attention of the Iowa Department of Human Services (DHS) in December 2007, due to the parents' use of marijuana in the home while the child was present. Kaylee was adjudicated to be a child in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2007).

Kaylee was removed from the parents' care on February 28, 2008, when the parents did not provide her with adequate medical care when she was running a very high temperature and had a significant burn on one leg. There were also concerns about safety issues and unsanitary conditions in the home. Kaylee was placed in foster care.

In May 2008, during an unsupervised visit, Gemini barricaded Kaylee in the living room of the home, and left food and a bottle out for her and then went to work, knowing Anthony was not awake. Kaylee was nine months old at that time, and unable to care for herself. After an incident of domestic violence, Gemini and Anthony separated.

In June 2008, Gemini gave birth to Edan. Edan was removed from Gemini's care on July 16, 2008. A service provider found Edan under a blanket on a couch, with a bottle propped up near him, while Gemini was asleep in another room. Edan was placed in the same foster home as Kaylee. Edan was adjudicated to be CINA under section 232.2(6)(c)(2).

In September 2008, the State filed a petition seeking termination of the parental rights of Gemini and Anthony to Kaylee. After a hearing on October 31, 2008, the juvenile court ordered that the hearing would be adjourned for approximately ninety days to permit Gemini to have additional time to work toward reunification.

In September 2008, a paternity test showed Anthony was not the father of Edan. A subsequent test showed Zachary was the father. Zachary was in prison on charges of third-degree burglary and manufacturing marijuana at the time of Edan's birth. He was released from prison on February 11, 2009.

On February 3, 2009, the State filed a petition seeking termination of Gemini and Zachary's parental rights to Edan. The juvenile court granted the State's motion to consolidate the cases involving Kaylee and Edan. In March 2009, Gemini filed a motion seeking to have the children placed in her care because she was entering a residential program for young mothers with children. This matter was also combined with the termination proceedings. In March 2009, Gemini had a drug test that was positive for marijuana.

The juvenile court entered an order on April 14, 2009, terminating the parental rights of Gemini, Anthony, and Zachary. The juvenile court terminated Gemini's parental rights to Kaylee and Edan under section 232.116(1)(h) (2009), and Zachary's parental rights to Edan under the same section. Anthony consented to termination of his parental rights. The court found Gemini remained unable to supervise the children, and termination of her parental rights was in the children's best interests. The court found Zachary had not participated in

services, and termination of his parental rights was in Edan's best interests. Gemini and Zachary 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 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Evidence is clear and convincing when it leaves no serious or substantial doubt about the correctness of the conclusion drawn from it. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## **III. Gemini**

**A.** Gemini asserts the juvenile court abused its discretion by suspending the termination proceedings on October 31, 2008, rather than returning Kaylee to her care at that time. Gemini did not object to the court's decision to adjourn the proceedings for approximately ninety days. In fact, Gemini asked for more time to work toward reunification. We conclude she has not preserved error on this issue. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) (noting an issue that was not raised before the juvenile court may not be raised for the first time on appeal).

**B.** Gemini asserts the juvenile court erred in finding that it was not in the children's best interests to be returned to the mother's care at the time of the termination hearing. The juvenile court found:

The evidence before the Court is that this mother has a fundamental lack of concern for her Children's safety. She does

not appreciate the need to supervise these Children and has continually exposed these Children to situations which any reasonable person would understand would place the children at grave risk of harm.

We agree with the juvenile court's findings that it would not be in the children's best interests to be returned to the care of the mother. Gemini was unable to appreciate the children's need for adequate supervision.

**C.** Gemini claims the State did not fulfill its obligation to engage in reasonable efforts to reunite her with her children. She points out that she had filed a motion seeking to have the children placed in her care because she was entering a residential program for young mothers with children. Gemini also states she should have been granted unsupervised visitation. The State has an obligation to make reasonable efforts to reunite a parent and child, but it is the 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).

A social worker testified that Gemini was not enthusiastic about attending the residential program, and that she stated it was her attorney's idea. There was also evidence that the program only provided two hours of parenting classes per week, and was designed for parents that had unsupervised contact with their children. The juvenile court had ordered that Gemini could have unsupervised contact in January 2009, but at the first unsupervised visit Gemini invited Anthony to the visit, in violation of the court's order. She also left Kaylee unsupervised at a McDonald's, while she went outside to smoke a cigarette. Based on these problems, visits were changed back to supervised. We conclude the State's efforts to reunite Gemini with her children were reasonable.

**D.** Gemini asserts there is not clear and convincing evidence in the record to support termination of her parental rights under section 232.116(1)(h). On our de novo review, we find termination of Gemini's parental rights is supported by sufficient evidence. The evidence showed that Gemini remained unable to properly supervise the children. During times when she had unsupervised visitation, she would leave her very young children without adequate care. There were also continuing concerns about marijuana use and anger management. We conclude Gemini's parental rights were properly terminated under section 232.116(1)(h).

**E.** Finally, Gemini contends the juvenile court erred by failing to assign one judge to handle the CINA and termination cases for these two children. Gemini failed to object before the juvenile court, and we conclude this issue has not been preserved for our review. See *N.W.E.*, 564 N.W.2d at 455.

#### **IV. Zachary**

**A.** Zachary claims the juvenile court violated his due process rights by relying upon the underlying CINA case in terminating his parental rights, when he was not a party to the CINA proceedings involving Edan. Generally, an issue not presented in the juvenile court may not be raised for the first time on appeal. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). "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) (addressing a due process challenge). This issue was not raised before the

juvenile court, and we conclude it has not been preserved for our review on appeal.

**B.** Zachary also claims the State did not engage in reasonable efforts to reunite him with his child. Zachary does not specify what different or additional services could have been provided to him. A parent has the responsibility to challenge or object to services prior to the termination hearing. *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999). We additionally note that Zachary did not participate in services after the time he was released from prison. Instead, he hid in a shed behind Gemini's home on an occasion when service providers were present. We conclude the services were reasonable under the facts of the case.

We affirm the decision of the juvenile court terminating Gemini's parental rights to Kaylee and Edan, and Zachary's parental rights to Edan.

**AFFIRMED.**