

IN THE COURT OF APPEALS OF IOWA

No. 2-321 / 12-0516
Filed June 27, 2012

**IN THE INTEREST OF L.M.,
Minor Child,**

**B.K.J., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Kathleen Sandre of Coppola, McConville, Coppola, Hockenber & Scalise,
P.C., West Des Moines, attorney and guardian ad litem for appellant father.

Kimberly Graham of Graham Law Collaborative, Indianola, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

Charles Fuson of the Youth Law Center, Des Moines, attorney and
guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

A father appeals from the order terminating his parental rights to his child, born in 2002. He contends the State did not make reasonable efforts to reunify him with the child and the court erred in terminating his parental rights under Iowa Code section 232.116(1)(b), (d), (e), (f), and (j) (2011),¹ “in that the statutory exception under 232.116(3)(a) applies due to the children being placed with a relative.” We affirm.

The father has been incarcerated since before the child’s removal from the mother’s custody in 2010. He underwent DNA testing in 2011, and his paternity was confirmed that June. In December the State petitioned to terminate the parental rights of both parents. The father participated in the February 2012 termination hearing by telephone from prison. He asked the court for an extension of time because he anticipated release between April and July, 2012, and he wanted an opportunity to build a relationship with the child and to help provide for her. At the close of the hearing the father’s attorney argued the court need not terminate the father’s parental rights because the child was in relative placement with the maternal grandmother. The attorney also argued the court should not terminate the father’s parental rights because the father wanted to develop a relationship with the child after his release from prison and he could provide for the child. The court terminated the father’s parental rights under section 232.116(1)(b), (d), (e), and (i).

¹ The court did not terminate the father’s parental rights under Iowa Code section 232.116(1)(f) or (j). The father does not challenge the termination under section 232.116(1)(i).

On appeal, the father contends reasonable efforts were not made to reunify him with the child but does not specify what other or additional services should have been offered or provided. The State asserts error was not preserved. The father did not request any services before the termination hearing and did not mention any lack of reasonable efforts or request any services at the hearing.

While the State has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services before a permanency or termination hearing, and if the parent does not do so, the issue is not preserved for appellate review. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005); *see also In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). We conclude the father failed to preserve error on this claim.

The father also contends the court should have refused to terminate his parental rights because a relative has legal custody of the child. *See* Iowa Code § 232.116(3)(a). The State asserts error was not preserved.

The termination order carefully addresses the evidence supporting the statutory grounds for termination, considers the child's best interests and how placement with the maternal grandmother meets the child's best interests, and concludes the child's best interests are served by termination of both parents' parental rights. *See id.* § 232.116(1), (2). The order does not address any of the factors in section 232.116(3) that allow the court to avoid an otherwise appropriate termination of parental rights. *See In re P.L.*, 778 N.W.2d 33, 40

(Iowa 2010). The father did not file a posttrial motion seeking a ruling on any of the section 232.116(3) factors.

Ordinarily, an issue must be both presented to and passed upon by the trial court before it may be raised and adjudicated on appeal. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). A motion under Iowa Rule of Civil Procedure 1.904(2), seeking to enlarge or amend findings and conclusions of the trial court, is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984); see also *In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982) (holding rule 1.904(2) applicable to juvenile court proceedings to terminate parental rights). Error was not preserved on this claim.

AFFIRMED.