

IN THE COURT OF APPEALS OF IOWA

No. 7-681 / 07-1367
Filed October 12, 2007

IN THE INTEREST OF J.C., Minor Child,

D.V.R., Father,
Appellant.

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

A father appeals from a juvenile court order terminating his parental rights
to one child. **AFFIRMED.**

Donald L. Williams, Des Moines, for appellant.

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

Zoshua Zeutenhorst of Marks Law Firm, Des Moines, for mother.

Jerry Foxhoven, Des Moines, guardian ad litem for minor child.

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

MILLER, J.

Darel is the father of Jaiden, who was one year and eight months of age at the time of a mid-July 2007 termination of parental rights hearing. In a late July order the juvenile court terminated Darel's parental rights pursuant to Iowa Code sections 232.116(1)(b) (child has been abandoned; child has been deserted), (d) (child adjudicated child in need of assistance (CINA) for neglect by parent, circumstance continues despite offer or receipt of services), (e) (child adjudicated CINA, child removed from physical custody of parents at least six consecutive months, parents have neither maintained significant and meaningful contact with child nor made reasonable efforts to resume care of child), and (h) (child three or younger, adjudicated CINA, removed from physical custody of parents six of last twelve months, cannot be returned to parents at present time) (2007). Darel appeals.¹ 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).

Jaiden was born in November 2005. Darel and Jaiden's mother lived together only part-time, and finally separated in about March 2006. Jaiden remained with his mother. Jaiden was removed from his mother in mid-October 2006 when she tested positive for cocaine and marijuana. Jaiden was placed in the temporary legal custody of his mother's friend. He remained with that friend

¹ The juvenile court's order also terminated the parental rights of Jaiden's mother, but she has not appealed.

until placed in the custody of his maternal grandfather in January 2007, where he has thereafter remained.

Jaiden was adjudicated a CINA in late November 2006, pursuant to Iowa Code sections 232.2(6)(b) (parent has neglected child or is imminently likely to do so), (c)(2) (parent's failure to exercise reasonable degree of care in supervising child), and (n) (parent's imprisonment or drug abuse results in child not receiving adequate care) (2005). Darel was serving a jail sentence at that time.

In early July 2006 Darel pled guilty to criminal mischief in the third degree and was placed on two years' probation. He was arrested in early October 2006 for possession of a controlled substance and probation violations. In later October Darel pled guilty to the possession charge and was sentenced to jail. He was released from jail in mid-January 2007.

Darel provided a bag of clothes, a few packs of diapers, and some formula for Jaiden. This all occurred during about the first five months of Jaiden's life, ending about April 2006. Darel has never provided any financial support for Jaiden.

Darel had no contact with Jaiden in the six months between his January 2007 release from jail and the July termination hearing. His only attempts to have contact consisted of about three telephone calls trying to reach a case worker and his attorney, all made in the first two to three months after his January 2007 release. On one of those occasions he left a message, including what he purported to be his telephone number, for the case worker. When she

attempted to reach him at the number he had provided she was informed by a male who answered the telephone that the number was not Darel's.

Darel did not attend or participate in an April 11, 2007 CINA review hearing. He claims his failure to attend was because he "didn't get any kind of papers." The evidence shows, however, that he had been brought from jail to the last previous hearing, at which the April 11 hearing was set.

Darel's arrest for possession of a controlled substance led to concerns about possible substance abuse. He did not provide a requested drug screen. Darel was ordered to complete a substance abuse evaluation, and follow any resulting recommendations. He did not do so.

Darel claims he has not abandoned, deserted, or neglected Jaiden. The State asserts that he appears to address only one of the several statutory grounds upon which his parental rights were terminated, section 232.116(1)(b) abandonment, and has thus not preserved error on the others. The juvenile court clearly addressed and ruled on each of the statutory grounds upon which it relied. The State's point therefore more correctly raises an issue of waiver, rather than error preservation. We need not and do not, however, decide the appeal on that basis.

"Abandonment" means the giving up of parental rights and responsibilities, accompanied by an intent to do so. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). "Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *Id.* Darel provided no support for Jaiden in the one and one-half years before the termination hearing. He had no

contact with Jaiden in the period of at least nine months before the termination hearing, and made no significant effort to do so. We conclude, as the juvenile court did, that the State proved Darel abandoned Jaiden.

We also find the State proved the section 232.116(1)(h) grounds for termination. The first three elements cannot reasonably be in dispute. We note again Darel's failure or refusal to take any required steps to address a possible drug abuse problem. Further, Darel has been totally absent from Jaiden's life for so long that, as acknowledged by Darel in his testimony, "[Jaiden] don't even know who I am any more." We find Jaiden cannot be returned to Darel at the present time without being subject to adjudicatory harm. We thus also conclude the State proved grounds for termination pursuant to section 232.116(1)(h).

Having found the State proved statutory grounds for termination pursuant to two statutory provisions, we need not decide whether it also proved grounds for termination pursuant to section 232.116(1)(d), section 232.116(1)(e), or both.² See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

Darel's petition might be read as also claiming the juvenile court erred by not placing Jaiden in the custody of an appropriate relative or in foster care and granting Darel additional time to prepare to have Jaiden placed with him. We agree with the State that no such issue was presented to or passed upon by the

² In declining to address these two additional statutory grounds that were relied upon by the juvenile court we do not intend to suggest that the State did not prove these grounds as well.

juvenile court, and thus error was not preserved on any such claim. We therefore decline to address it. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled on by the district court in order to preserve error for appeal.”).

AFFIRMED.