

IN THE COURT OF APPEALS OF IOWA

No. 0-230 / 10-0280

Filed April 21, 2010

**IN THE INTEREST OF A.D.B.,
Minor Child,**

J.D.-B., Father,
Appellant.

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

A father appeals from the district court's order terminating his parental rights to his son. **AFFIRMED.**

Jami J. Hagemeyer of Williams, Blackburn & Maharry, P.L.C., Des Moines, for appellant father.

Nancy Trotter, Des Moines, for appellee mother.

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 State.

John Jellineck of Public Defender's Office, Des Moines, for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

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

VOGEL, P.J.

Javier appeals the termination of his parental rights to his son, A.D.B., born in November 2008.¹ He asserts there was not clear and convincing evidence to find he abandoned A.D.B., reasonable efforts were not offered to him to achieve reunification, and termination was not in A.D.B.'s best interests.

We review termination of parental rights cases de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

A.D.B. was adjudicated to be a child in need of assistance (CINA) in June 2009, after he tested positive for marijuana at birth, and his parents had multiple domestic violence incidents. A.D.B. was removed from his home in June 2009, and has not lived with Javier since that time. During the summer of 2009, Javier was incarcerated in Nebraska, and then deported. He returned to the United States, but was again incarcerated in Arizona, where he remained at the time of trial. During the pendency of this case, the Iowa Department of Human Services (DHS) had difficulty locating Javier's changing whereabouts. Javier's rights were terminated under Iowa Code sections 232.116(1)(b) (2009) (abandonment) and (d) (child CINA for abuse or neglect, circumstances continue despite receipt of services).² He appeals.

Javier was incarcerated and again facing deportation at the time of the termination hearing. Javier's incarceration was due to his own actions, resulting in his having virtually no contact with A.D.B. since March 2009. See *In re E.K.*,

¹ The parental rights of A.D.B.'s mother were also terminated. She does not appeal.

² "When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm." *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

568 N.W.2d 829, 831 (Iowa Ct. App. 1997). He asserts he could care for A.D.B. once he was released and again deported, but his makeshift plans included returning to Mexico with A.D.B., with no evidence of a home, job, or any stability to offer A.D.B. While he claims he was offered no services, he could not fault DHS for being unable to provide services while he was either in Mexico or in prison. *Id.* Further, Javier failed to demand other services. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (stating the parent has an obligation to demand other, different, or additional services prior to the termination hearing). The district court found,

The fact is that he created the situation that prevents him from assuming that responsibility when he reentered the United States illegally after prior deportation It does not matter that he has a house in Mexico, that he has relatives there I would not be able to place [A.D.B.] in his custody even if he were released today.

We agree and conclude there is clear and convincing evidence in the record to support termination of Javier's parental rights under section 232.116(1)(d).

Javier also asserts termination was not in A.D.B.'s best interests. *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010) (stating that even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2)). "Giv[ing] primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child," we affirm the district court. *Id.* at 40. At the time of the hearing, A.D.B. was living in relative placement with his four half siblings, where he was reported to be well-adjusted, growing, and thriving. He is in need of the permanency and nurturing this home and these relatives are

willing to continue to provide him. *In re J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in determining a child's best interests). We conclude termination of Javier's parental rights was in A.D.B.'s best interests as set forth under the factors in section 232.116(2).³

AFFIRMED.

³ Javier asserts he deserved additional time prior to termination. Our legislature has established time periods for parents to demonstrate they can safely parent, and Javier did not demonstrate in that time that he could do so. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).