

IN THE COURT OF APPEALS OF IOWA

No. 0-361 / 09-1701
Filed July 28, 2010

IN THE INTEREST OF A.H.B.,
Minor child,

M.L.B., Mother,
Petitioner,

J.J.B., Father,
Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
Judge.

A father appeals from the order terminating his parental rights to his child
pursuant to Iowa Code chapter 600A (2007). **REVERSED.**

John J. Hines of Dutton, Braun, Staack, Hellman, P.L.C., Waterloo, for
appellant-father.

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellee-
mother.

Patrick G. Vickers of Vickers Law Office, guardian ad litem for minor child.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

A father appeals from the order terminating his parental rights to his child pursuant to Iowa Code chapter 600A (2007). He contends the grounds for termination were not proved by clear and convincing evidence and termination is not in the child's best interest. We review his claims de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The request for termination stems from an incident in which the father committed an act of sexual abuse upon his stepdaughter¹ (his son's half-sister), who was then seven years of age. The father was convicted of indecent contact with a child and sentenced to a suspended two-year term of imprisonment. As a term of his probation, he was required to reside at a residential treatment facility for one year or until maximum benefits were received.

The father's parental rights were terminated pursuant to section 600A.8(9), which allows termination where

[t]he parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

The father argues he was not imprisoned as required by this section because he received a suspended sentence and was ordered to reside in a residential correction facility, not placed in the prison system. He also argues the statute requires he be imprisoned at the time of trial.

¹ At the time the abuse was reported, the girl believed J.B. was her biological father. J.B. considered the girl to be his daughter.

In the absence of a legislative definition for the term “imprisoned” used section 600A.8(9), we consult a dictionary to give the word its plain and ordinary meaning. See *Lauridsen v. City of Okoboki Bd. of Adjustment*, 554 N.W.2d 541, 544 (Iowa 1996). The word “imprison” is defined as follows:

To put in a prison; to put in a place of confinement. To confine a person, or restrain his liberty, in any way.

Black’s Law Dictionary 757 (6th ed. 1990). Because of the restraints placed on its residents’ liberty, we conclude the term “imprisoned” includes confinement in a residential correctional facility.

However, the father was no longer confined at the residential treatment facility at the time the termination hearing in September 2009. The petition for termination was filed in February 2008 and the father was released shortly thereafter. We are unwilling to read section 600A.8(9) to only require the parent to have been imprisoned at a time in the past for a crime against another child in the household, as suggested by the mother and the guardian ad litem. Typically, we use the words “has been” to refer to a condition that existed in the past and continues to exist in the present. If we were reading section 600A.8(9) in a vacuum, perhaps the phrase “has been imprisoned” could be applied to a situation where the parent was imprisoned in the past but *no longer is* imprisoned at the time of termination. However, the second part of section 600A.8(9) also uses the same phrase “has been imprisoned”—this time to refer to a parent who clearly *still is* imprisoned at the time of trial and will likely continue to be imprisoned for another five years. We conclude the phrase “has been imprisoned” needs to be given the same meaning throughout section 600A.8(9)

and requires the parent still to be imprisoned at the time of termination. Because the father was not imprisoned at the time of termination, the grounds for termination were not proved. Accordingly, we reverse the district court order terminating the father's parental rights.

REVERSED.