

IN THE COURT OF APPEALS OF IOWA

No. 0-768 / 10-1506
Filed January 20, 2011

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

**J.A.L.-R., Father,
Appellant.**

Appeal from the Iowa District Court for Boone County, Steven J. Oeth,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Michael Tunesvik, Boone, for appellant father.

Meredith Mahoney Nerem, Boone, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Jim Robbins, County Attorney, for appellee State.

Wesley Johnson, Ogden, for minor child.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A father appeals the termination of his parental rights to his child, age seven. He contends the juvenile court erred finding the State proved the grounds for termination by clear and convincing evidence. We affirm.

I. Background Facts and Proceedings.

T.L. came to the attention of the Iowa Department of Human Services (Department) in 2007 after it was discovered that one of T.L.'s siblings¹ was suffering from severe tooth decay and infections of the urinary tract and ear. The father met with a child protection worker with the Department, and the father voluntarily placed the children into the Department's custody. The child was adjudicated a child in need of assistance (CINA) by the juvenile court on November 5, 2007.

The father and mother were offered services. At some point after the Department became involved in the case, the father was deported. The father returned to the United States, and he was later arrested on drug charges and placed in the Polk County Jail. On January 28, 2010, the father pled guilty in federal court to conspiracy to distribute at least 500 grams of a mixture or a substance containing methamphetamine. He was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.

The mother did not progress with services, and she consented to the termination of her parental rights. On July 1, 2010, the State filed its petition to terminate the father's parental rights. Additionally, the State filed an application

¹ T.L.'s siblings are not at issue in this case.

for the appointment of a guardian ad litem (GAL) as counsel for the father because the father was incarcerated, and a GAL was subsequently appointed. The father received proper notice of the termination petition and the order setting the matter for hearing.

On August 27, 2010, a hearing on the petition was held. Prior to the hearing, the father's GAL filed a motion to continue, which the GAL reasserted orally at the hearing. The GAL stated he had attempted to contact the father, but had not heard anything from the facility where the father was incarcerated or from the father. The GAL requested an additional thirty days to contact the father and determine his wishes in the matter. The juvenile court denied the motion, finding it was in the child's best interests that the matter not be continued because the child was in need of permanency and the father's own conduct had led to his present circumstances. Trial on the petition then commenced.

A Department worker testified that the father had not seen the child for at least a year. The worker testified the father was to be imprisoned for 120 months, and the father's judgment in the federal case was introduced into evidence, showing a sentence of 120 months. The worker testified she believed it was unlikely the father would be released from prison for a period of five or more years. She testified she believed he would be deported again to Mexico after he is released from prison. She also testified the father would not be in a position to resume care of the child. Thereafter, the court entered its order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(b), (f), and (j) (2009).

The father appealed, arguing the juvenile court erred in denying his motion to continue and in finding the State proved by clear and convincing evidence the grounds for termination. Because we agreed the court should have granted his motion to continue, we entered an order on November 16, 2010, reversing the juvenile court's ruling and allowing the father additional time to present evidence on his behalf, with that evidence to be considered by the juvenile court. The father's deposition was taken and submitted into the record. In his deposition, the father testified the earliest he expected to be released from prison was in 2017 and he expected to be deported back to Mexico after his release.

The juvenile court reviewed the father's deposition. On January 3, 2011, the court entered an order reaffirming its ruling terminating the father's parental rights, finding the father's "deposition testimony confirms the court's findings with respect for the reasons for granting the State's petition."

We now consider the father's remaining issue on appeal.

II. Discussion.

The father argues the State failed to prove the grounds for termination by clear and convincing evidence. We disagree.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(j) where:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been

transferred from the child's parents for placement pursuant to section 232.102.

(2) 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.

Here, the judgment entered against the father in federal court was admitted into evidence. The judgment shows the father was sentenced to 120 months, or ten years. The Department worker testified it was unlikely the father would be released from prison for a period of five or more years and the father would likely be deported again when he was released. The father himself testified he would be incarcerated until 2017. We find this to be clear and convincing evidence that the father would be incarcerated for five or more years.

The child was adjudicated a CINA pursuant to section 232.96, and custody was transferred from the child's parents for placement pursuant to section 232.102. Furthermore, the father is imprisoned, and it is unlikely he will be released from prison for a period of five or more years. We find the State proved by clear and convincing evidence grounds for termination under section 232.116(1)(j). Accordingly, we affirm the judgment of the juvenile court terminating the father's parental rights.

AFFIRMED.