

IN THE COURT OF APPEALS OF IOWA

No. 1-982 / 11-1325
Filed January 19, 2012

**IN THE INTEREST OF A.S.,
Minor Child,**

**K.G.S., Father,
Appellant.**

Appeal from the Iowa District Court for Mahaska County, Randy S. DeGeest, District Associate Judge.

A father appeals the juvenile court's ruling terminating his parental rights.

AFFIRMED.

Eric J. Palmer of Palmer & Palmer, Oskaloosa, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Rose Anne Mefford, County Attorney, and Tyler L. Eason, Assistant County Attorney, for appellee State.

Amber L. Thompson of Stravers Law Firm, Oskaloosa, for appellee mother.

Charles A. Stream, Oskaloosa, attorney and guardian ad litem for minor child.

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

POTTERFIELD, J.

A father appeals the termination of his parental rights to his child. He asserts the juvenile court erred in: (1) denying his motion to continue the termination trial; and (2) finding the State proved grounds for termination by clear and convincing evidence.

I. Motion to Continue

At the time of the termination trial on July 15, 2011, the father was incarcerated. The day of the trial, he filed a motion seeking a continuance because it was “likely that” he would be paroled in September 2011 and would be able to participate in person in a termination trial held after his release. In ruling on the motion, the juvenile court considered the best interests of the child, noting the child was under the age of three and had been out of the home for nearly nine months. The juvenile court also noted that while the father had an opportunity to be paroled, it was not a guarantee. The juvenile court denied the motion to continue orally at trial and found it was in the child’s best interests to proceed with the trial as scheduled.

On appeal, the father asserts fundamental due process and the right to be heard required a continuance of the termination trial. He further asserts he had a right to be physically present to meet with his attorney and face his accusers. Though the father cites no authority in support of this argument and has therefore waived this issue on appeal, we opt to briefly address its legal merits. See Iowa R. App. P. 6.903(2)(g)(3) (stating failure to cite authority in support of an issue may be deemed waiver of that issue). We review a ruling on a motion for continuance under an abuse-of-discretion standard and will only reverse if

injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

The father mistakenly asserts rights granted to a criminal defendant in a criminal case apply in this civil termination. The father's asserted right to "face his accusers" seems to be an attempt to apply the confrontation clause in his case. The supreme court has already determined that the sixth amendment, which grants those accused in criminal proceedings the right to confront witnesses against them, applies only to criminal cases. *See In re D.J.R.*, 454 N.W.2d 838, 846 (Iowa 1990). A termination of parental rights is a civil case. *See In re J.S.*, 470 N.W.2d 48, 51–52 (Iowa 1991). Therefore, the father has no sixth amendment right to confront witnesses against him.

Further, there is no due process requirement that an incarcerated parent be present at a termination trial, especially when the parent is represented by counsel at the trial and is not denied an opportunity to present testimony by deposition at the trial. *Id.* at 52 ("Where a parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition, we cannot say the parent has been deprived of fundamental fairness."). The father participated in the trial through counsel.¹ Nothing in the record suggests, nor did the father argue on appeal, that he was denied the opportunity to present his testimony by deposition; it appears the father never sought to present such a deposition. The father's attorney informed the judge at trial that the father was

¹ The court also appointed a guardian ad litem to represent the father pursuant to Iowa Rule of Civil Procedure 1.211. The guardian ad litem did not participate in the trial.

available by phone “if we need him.” However, the father did not participate in the trial telephonically, nor did the father request permission to appear at the trial by telephone. The father did not request alternative means that would have allowed him to participate in the trial, apparently insisting on physical presence. Contrary to the father’s assertions, due process does not require that he be physically present at the termination trial. We therefore conclude the juvenile court did not abuse its discretion in denying the father’s motion to continue.

II. Grounds for Termination

The father also asserts the juvenile court erred in concluding the State proved grounds for termination by clear and convincing evidence. The juvenile court terminated the father’s parental rights pursuant to Iowa Code section 232.116(1)(e) and (h) (2011). The father’s argument on appeal addresses solely his attempts to maintain contact with his child, which are relevant only to section 232.116(1)(e). His failure to challenge the termination of his parental rights under section 232.116(1)(h) allows us to affirm the termination on these grounds. See Iowa R. App. P. 6.903(2)(g)(3); *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.”).

Further, when we consider the issue on its merits, we also conclude the juvenile court did not err in finding the State proved grounds for termination under section 232.116(1)(h). The child was under the age of three; the child had been adjudicated a child in need of assistance; the child had been removed from the physical custody of the parents for more than six of the last twelve months; and

the child could not be returned to the father's custody at the time of the termination trial as the father was incarcerated at the time. See Iowa Code § 232.116(1)(h). Upon our de novo review of the record, we conclude the juvenile court properly found grounds for termination existed under section 232.116(1)(h), regardless of the father's attempts to maintain contact with his child. See *S.R.*, 600 N.W.2d at 64 (stating review in termination proceedings is de novo).

AFFIRMED.