

**IN THE COURT OF APPEALS OF IOWA**

No. 2-356 / 12-0528  
Filed May 9, 2012

**IN THE INTEREST OF N.L.P.,  
Minor Child,**

**J.K., Father,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Zachary S. Hindman of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Loan H. Hensley, Assistant County Attorney, for appellee State.

Jessica R. Noll of Deck Law, L.L.P., Sioux City, for mother.

Timothy J. Scherle, Sioux City, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

**POTTERFIELD, J.**

The juvenile court terminated the father's parental rights to his son pursuant to Iowa Code section 232.116(1)(b), (d), (e), and (h) (2011).<sup>1</sup> We need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

The father appeals the termination of his parental rights to his son, N.L.P., born in April 2011. The child, who was adjudicated a child in need of assistance (CINA) in August 2011, has been removed from his parents' custody since June 30, 2011—more than six consecutive months. The father argues on appeal that there is not sufficient evidence that the child cannot be returned to him at present. But, by his own testimony, the father is not able to provide a safe and stable environment for the child at this time. Moreover, the father testified he has not seen his child for eight months, has no stable residence, and has never paid child support. The father further acknowledged he had failed to participate in any other services offered by DHS.

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<sup>1</sup> The pertinent provisions of section 232.116(1) allow the juvenile court to terminate parental rights where there is clear and convincing evidence that “the child has been . . . deserted,” Iowa Code § 232.116(1)(b); or, the “court has previously adjudicated the child to be a child in need of assistance after finding the child to have been . . . neglected as the result of the acts or omissions of one or both parents” and subsequent to the CINA adjudication, the parents were offered services to correct the circumstance which led to the adjudication, and the “circumstance continues to exist despite the offer or receipt of services,” *Id.* § 232.116(1)(d); or, a parent has not “maintained significant and meaningful contact” with a child previously adjudicated CINA who has been removed from parent's custody for at least six consecutive months, *Id.* § 232.116(1)(e); or, where there is a child three years or younger, previously adjudicated CINA, who has been removed from the physical custody of the child's parents for at least six months of the last twelve months, and “[t]here is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.” *Id.* § 232.116(1)(h).

We also note the juvenile court case plan required that he complete a drug evaluation, and follow all recommendations. The father did not enter treatment for his methamphetamine use until November 2011. He states he was “kicked out” of the treatment program—documentation of his discharge states that on November 30, he left treatment “against medical advice” and was “discharged unsuccessfully still in denial of his illness and in need for recovery.” The father testified he continued to smoke marijuana, but denied continued use of methamphetamine. He has refused to comply with drug testing.

Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010), we find there is clear and convincing evidence to support termination of the father’s parental rights pursuant to Iowa Code section 232.116(1)(h). We have no substantial doubts as to the correctness of the finding that the child cannot be returned to the father safely. See *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (“‘Clear and convincing evidence’ means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.”). We also conclude the termination of parental rights will best further the long-term nurturing and growth of the child. *Id.* § 232.116(2).

The father also argues that descriptions of four supervised visits he had with his child in July 2011 show he is “a loving father” with “a strong emotional bond” with his child. The father has not seen his one-year-old child for more than eight months. The record does not support the existence of a bond sufficient to preclude termination. See Iowa Code § 232.116(3)(c).

The father also asks that we remand to the juvenile court to develop a record in support of his claims of ineffective assistance of counsel.<sup>2</sup> We do not remand because the father cannot show the requisite prejudice.<sup>3</sup>

**AFFIRMED.**

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<sup>2</sup> See generally *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992) (“The test for ineffective assistance of counsel in termination cases is generally the same as in criminal proceedings.”). “The elements of an ineffective-assistance claim are (1) counsel’s performance was deficient, and (2) actual prejudice resulted.” *In re C.M.*, 652 N.W.2d 204, 207 (Iowa 2002). If either element is not proved, the claim of ineffective assistance of counsel fails. *Id.* Counsel has no obligation to raise an issue that has no merit. *Id.*

<sup>3</sup> The father first asserts that if his claims on appeal were not properly preserved, counsel was ineffective. We have reached the merits of his claims on appeal. The father also asserts counsel was ineffective in failing to impeach allegations made by the mother that supported the initial CINA adjudication. However, no appeal was taken from the adjudication and disposition, and principles of res judicata bar an untimely challenge to the adjudication. See *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997). Finally, the father contends counsel was ineffective in failing to move to request the judge recuse himself because the judge had prior knowledge of the father’s situation as a child as the result of juvenile court involvement. The father has not shown actual prejudice and his claim is insufficient to merit recusal. See *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994).