

**IN THE COURT OF APPEALS OF IOWA**

No. 2-409 / 12-0654  
Filed May 23, 2012

**IN THE INTEREST OF T.L. and M.L.,  
Minor Children,**

**J.L., Father,**  
Appellant.

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Appeal from the Iowa District Court for Humboldt County, Angela L. Doyle,  
District Associate Judge.

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

Gregory H. Stoebe of Stoebe Law Office, Humboldt, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, and Jennifer A. Benson, Special County Prosecutor, for  
appellee State.

Ashley M. Emick of Arends & Lee, Humboldt, for appellee mother.

Andrew J. Lemmenes of Baker, Johnsen & Sandblom, Humboldt, attorney  
and guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**VOGEL, P.J.**

Johnny appeals the termination of his parental rights to M.L., born in 2006, and T.L., born in 2003. The district court terminated Johnny's parental rights under Iowa Code section 232.116(1)(b) (children abandoned or deserted) and (e) (adjudicated CINA, removed at least six months, parent has not maintained significant and meaningful contact with child during previous six consecutive months) (2011). He appeals asserting lack of proof on both grounds. We affirm.

Our review of proceedings to terminate parental rights is *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). When the district 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 district court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Johnny asserts the State did not prove by clear and convincing evidence that he failed to maintain significant and meaningful contact with the children under Iowa Code section 232.116(1)(e). For purposes of this code provision,

*“significant and meaningful contact”* includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Iowa Code § 232.116(1)(e)(3).

Johnny testified at the termination hearing via telephone, as he is currently incarcerated in Indiana for “sexual misconduct with a minor.”<sup>1</sup> When asked about his relationship with M.L. and T.L., Johnny claimed he was “very close” to them because “I was there for the birth.”<sup>2</sup> However, he then explained that he had not seen nor had any contact with M.L. and T.L. since before he was incarcerated in 2009. Johnny testified that he did not write the children because he did not know where their mother was living. Johnny also explained that although M.L. and T.L. moved to Iowa in 2007, he had never lived in Iowa and only had visits with the children since 2007. When asked the ages of the children, Johnny stated, “Well, [T.L.] should be at least 7 or 8; and [M.L.] should be 5 or 6 I know.” Finally, when asked on cross-examination, “In the past five years, would you agree that you’ve seen [M.L. and T.L.] about two times?,” Johnny responded, “Maybe, if that.”

Johnny faults the Iowa Department of Human Services (DHS) for failing to provide services to work toward reunification, alleging no efforts were made to help him contact his children and stating he was not included in the case permanency plan.<sup>3</sup> While Iowa courts have recognized that “termination is not a necessary result of conviction of a crime and resulting imprisonment,” our supreme court has stated that a parent “cannot use his incarceration as a justification for his lack of relationship with the child.” *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). Further, an incarcerated parent “cannot fault DHS for being

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<sup>1</sup> Johnny was sentenced on a forcible felony to fifteen years, with five suspended and five on probation. He testified that his anticipated date of release from prison is March 4, 2013.

<sup>2</sup> Johnny also testified that he had ten children and that he believed there were seven different mothers.

<sup>3</sup> There is no evidence in the record indicating that Johnny requested DHS services prior to termination.

unable to provide him additional services when his own actions prevented him from taking advantage of them.” *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000).

On our review of the record, we agree with the district court’s determination that Johnny failed to maintain “significant and meaningful contact” with his children as defined under Iowa Code section 232.116(1)(e)(3). Johnny had very little involvement with the children prior to his imprisonment. Thereafter, he cannot fault DHS for failing to include him in a case permanency plan when he was incarcerated in Indiana and his anticipated release from prison is not until March 2013. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) (recognizing a parent’s imprisonment at a distant facility may render the provision of reunification services infeasible); see also *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (“We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children.”).

Johnny has not exhibited genuine efforts to maintain communications with the children, and his absence from their lives—he admitted he had probably seen them twice in the last five years—is contrary to any claim he now makes that he has “maintain[ed] a place of importance” in his children’s lives. Iowa Code § 232.116(1)(e)(3). For these reasons, we agree with the district court that grounds for termination under Iowa Code section 232.116(1)(e) were proved by clear and convincing evidence. We therefore affirm.

**AFFIRMED.**