

IN THE COURT OF APPEALS OF IOWA

No. 2-523 / 12-0847

Filed June 27, 2012

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

**G.D.B., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Tammi M. Blackstone of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant father.

Nancy Trotter, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Nicole Garbis Nolan, of the Youth Law Center, Des Moines, for minor child.

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

EISENHAUER, C.J.

A father appeals from the order terminating his parental rights to his child. He contends the court erred in denying his request to keep the record open to allow for deposition of a caseworker. On de novo review, *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm.

The child, born in 2008, and a half-sibling, born in 2010, were removed from the mother's care in March 2011 because of the mother's relapse into substance abuse. The half-sibling was placed with her father, C.W., and is not involved in this appeal. S.B.'s father became involved about the time of the May 2011 adjudication hearing, which he attended. He indicated he was not stable enough to have the child placed with him, but wanted her placed with a relative, who had custody of the child's older sibling after parental rights were terminated. At the time of that termination, the father was incarcerated for child endangerment. The father has a history of substance abuse. He attended various hearings and family team meetings during this case, but refused to complete a substance abuse evaluation until January 2012 and refused to provide any drug screens. The State petitioned to terminate the father's parental rights under Iowa Code section 232.116(1)(b), (d), (e), (g), and (h) (2011).

The termination hearing started nearly twenty-five minutes late. Neither the mother nor the father had appeared. The State noted the caseworker had moved to a different city and was not available to testify by telephone as expected, but offered to make him available by telephone deposition at the State's expense. The father's attorney offered two exhibits, noted she had anticipated being able to question the caseworker, wanted to speak with her

client before agreeing to close the record, and asked the court to keep the record open so she could question the caseworker. The court denied the motion. A few minutes later, the father entered the courtroom. The court recessed briefly so the father could consult with his attorney. When court reconvened, the father's attorney stated:

I've had a moment to consult with my client, [G.D.B.]. [He] is not willing to consent to the termination of his parental rights, but he also does not want to offer any independent evidence, other than the two exhibits that we have just offered, which were admitted. *And he would prefer to just stand on the record as it is now.*

(Emphasis added.) The court summarized:

For the record, this hearing started approximately 9:20. It was scheduled for 9 a.m. Both parents' names were called in the hallway. No one was present. The State presented documentary evidence. We heard professional statements of the lawyers. . . . And now [the father] has appeared, as it relates to [the child]. And I understand there to be no independent evidence.

Unless I hear otherwise, I will consider the record closed at this time. Is that accurate?

Each of the attorneys responded "Yes, Your Honor."

The court terminated the father's parental rights under section 232.116(1)(d), (e), (g), and (h).

On appeal, the father contends the court erred in denying his request to keep the record open to allow for a deposition of the caseworker because three of the statutory grounds for termination "should have required the testimony" of the caseworker "to prove all the elements by clear and convincing evidence" and because the father "should have been given the right to question the [caseworker] for his own defense."

The father has not challenged the termination of his parental rights under section 232.116(1)(h). We find clear and convincing evidence, without the caseworker's testimony, supports termination on this ground and affirm. See *re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (allowing affirmance if any one of multiple grounds supported by clear and convincing evidence).

The father has waived his claim the court erred in not keeping the record open. After the court denied the motion to keep the record open, the father arrived at the hearing. After he consulted with his attorney during a brief recess, the father informed the court "he would prefer to just stand on the record" as it was at that time. Then he consented to the court closing the record.

AFFIRMED.