

**IN THE COURT OF APPEALS OF IOWA**

No. 6-410 / 06-0692  
Filed June 28, 2006

**IN THE INTEREST OF J.L. and V.L.,  
Minor Children,**

**J.U.M., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights to two  
children. **AFFIRMED.**

Victoria Place, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Faye Jenkins,  
Assistant County attorney, for appellee-State

Kayla Stratton, Des Moines, guardian ad litem for minor children.

Considered by Zimmer, P.J., and Hecht and Eisenhauer, JJ.

**HECHT, J.**

Jeffrey M. is the father of Veronica L., who was born in 1995, and Jeffrey L., who was born in 1998. The children first came to the attention of the Iowa Department of Human Services in 2002, when they were removed from their mother's home and placed in foster care due to concerns regarding substance abuse and the condition of their home. At this time, Jeffrey M. was incarcerated on convictions for forgery and theft. The children were adjudicated as children in need of assistance (CINA) but were returned to the care of their mother, Melissa, following a modification of the placement order.<sup>1</sup>

Again in 2005, the children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2005) after Jeffrey L. found a cigarette lighter and ignited a fire that destroyed the family's house. Jeffrey M. was again incarcerated, this time on a conviction for assault with intent to commit sexual abuse. Following disposition, the children remained in their mother's home. On November 21, 2005, the State filed a petition seeking to terminate Jeffrey M.'s parental rights. Following a hearing, in which Jeffrey M. participated by telephone from prison, the court granted the petition and terminated Jeffrey M.'s parental rights under sections 232.116(1)(b), (d), (e), (f), and (i). Jeffrey M. appeals.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by

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<sup>1</sup> This CINA case was closed after the children's mother successfully accessed drug treatment services.

clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

On appeal, Jeffrey M. maintains (1) the denial of his request to continue the termination hearing until such time as he was released from prison and could be physically present at the hearing violated his due process rights (2) the court's exclusion of evidence of matters antecedent to the current CINA proceedings violated his due process rights, and (3) there is no clear and convincing evidence to support any of the statutory grounds for termination. We will address each of these arguments in turn.

In denying both Jeffrey's request to continue and request to be transported to the hearing, the court first reasoned that "the law requires these matters to be adjudicated in a timely manner" and that a four-month continuance would thus not be appropriate. As for Jeffrey's desire to appear in person at the hearing, the court noted our caselaw does not grant parents an absolute right to be present at termination hearings.

We find no abuse of discretion in these rulings. First, we conclude an expeditious adjudication of this matter is in the children's best interests. They should not be forced to endlessly await the maturity of their natural father. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Moreover, although due process requires "fundamental fairness" in judicial proceedings, see *Lassiter v. Dep't of Social Servs.*, 452 U.S. 18, 25, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640, 648 (1981), it is not required that an incarcerated parent be present at a termination of parental rights hearing. See, e.g., *In re J.S.*, 470 N.W.2d 48, 52 (Iowa Ct. App.

1991) (holding incarcerated parent's due process rights not violated where he received notice of the termination petition and hearing, was represented at the hearing by counsel, and parent had opportunity to present his testimony by deposition).

We next address Jeffrey's claim the court's evidentiary ruling, which in effect precluded him from relying on evidence which arose prior to the current CINA proceedings, violated his right to due process. We conclude that, because this matter was not raised or addressed as a constitutional matter below, it is not preserved for our review. Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002).

Finally, upon our careful de novo review of the record, we conclude the court properly terminated Jeffrey M.'s parental rights under section 232.116(1)(f), which requires clear and convincing evidence that the children cannot be returned to Jeffrey M.'s custody. Most significantly, Jeffrey M. has been incarcerated for much of his children's lives, and remained so at the time of this termination hearing. Although he hoped to be released in June of 2006, he was clearly in no position to resume care of the children at the time of the termination hearing. In addition, while DHS and the juvenile court made it clear they expected Jeffrey M. to complete psychosocial and sex offender evaluations following the children's first adjudication in order to receive visits with them, he failed to do so. While in prison, Jeffrey was offered sex offender treatment, but he failed a polygraph test and did not successfully complete the program. Although Jeffrey did testify that he would undertake sex offender treatment

following his release from prison, evidence was presented that such treatment could take anywhere from twelve to eighteen months. Such a wait would be an intolerable hardship for these children. Accordingly, we affirm the termination of Jeffrey's parental rights.

**AFFIRMED.**