

**IN THE COURT OF APPEALS OF IOWA**

No. 6-482 / 06-0789

Filed June 28, 2006

**IN THE INTEREST OF  
N.D., M.A.D., AND M.K.D.,  
Minor Children,**

**C.D., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

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

Jesse A. Macro, Jr., Des Moines, for appellant.

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

Yvonne Naanep, Des Moines, guardian ad litem for minor children.

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

**HECHT, J.**

Carlos is the father of M.D., born in 1990, M.A.D., born in 1997, and N.D., born in 2000. The family came to the attention of the Iowa Department of Human Services in May of 2004, when Carlos physically assaulted M.A.D., causing her to have blood on her cheek and a “ring” around her neck. Later that year, M.D. accused Carlos of sexually abusing her. In October of 2004, the children were adjudicated as children in need of assistance (CINA). After Carlos was found guilty of the second and third-degree sexual abuse of M.D. and sentenced to a thirty-five-year term of incarceration, the State filed a petition to terminate his parental rights. Following a hearing on the petition, the court granted the State’s request and terminated Carlos’s parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (f), (i), (j), and (m) (2005). Carlos 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 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).

First, we reject Carlos’s contention that “his rights were violated during the termination hearing by not allowing him to be physically present.” Although due process requires “fundamental fairness” in judicial proceedings, see *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 25, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640, 648 (1981), it does not require that an incarcerated parent be present at a termination of parental rights hearing. *In re J.S.*, 470 N.W.2d 48, 52 (Iowa Ct.

App. 1991) (holding that where incarcerated parent received notice of the termination petition and hearing, was represented by counsel at the hearing, and had opportunity to present parent's testimony by deposition, due process was provided). Here, the court accepted Carlos's testimony by deposition. Carlos received all the process he was due here.

We next address Carlos's claim that clear and convincing evidence does not support the termination under any of the cited provisions. Upon our careful de novo review of the record, we find termination is appropriate under section 232.116(1)(f), which requires a finding, by clear and convincing evidence, that the children cannot be returned to their father's custody. As noted, Carlos has been found guilty of sexually abusing one of his daughters, and has been sentenced to serve up to thirty-five years in prison.<sup>1</sup> During the course of the CINA case and prior to Carlos's conviction, sex abuse treatment was offered to Carlos; however, he refused the offer, claiming that his participation would require an admission of the allegations against him.

Based on Carlos's conviction on the sexual abuse charge and his resulting incarceration for the foreseeable future, it is unlikely he could resume the children's care before they reach their majority. We therefore conclude the children cannot be returned to Carlos's custody as contemplated in section 232.116(1)(f). Because clear and convincing evidence in the record

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<sup>1</sup> The children's CINA adjudication was based on Carlos's sexual abuse of his daughter M.D. This adjudication was affirmed by this court in *In re N.D.*, No. 04-2038 (Iowa Ct. App. March 31, 2005). As such, the juvenile court properly determined that the finding of sexual abuse was preclusive upon it. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994) (noting that principles of res judicata preclude a court from relitigating an issue that has previously been decided).

demonstrates that termination of Carlos's parental rights is in the children's best interests, we affirm the juvenile court's order.

**AFFIRMED.**