

**IN THE COURT OF APPEALS OF IOWA**

No. 7-451 / 07-0788

Filed July 12, 2007

**IN THE INTEREST OF M.W., M.W., and N.S.,  
Minor Children**

**M.S.W., Father of M.W. and M.W.,**  
Appellant,

**N.R.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A father appeals the termination of his parental rights to his children.

**AFFIRMED.**

H. Nick Gloe, Cedar Rapids, for appellant-father of M.W. and M.W.

Dawn Wilson, Cedar Rapids, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly J. Kaufman,  
Assistant County Attorney, for appellee.

Thomas Viner, Cedar Rapids, for father of N.S.

Thomas O'Flaherty, North Liberty, guardian ad litem for minor children.

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

**EISENHAUER, J.**

A father appeals the termination of his parental rights to his children.<sup>1</sup> He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends the state failed to make reasonable efforts to reunite him with his children. We review this claim de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b) and (f) (2007). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(b) where "there is clear and convincing evidence that the child has been abandoned or deserted."

Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. Two elements are involved in this characterization. First, the giving up of parental rights and responsibilities refers to conduct. Second, the intent element refers to the accompanying state of mind. Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances.

*In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996) (citations omitted).

We conclude there is clear and convincing evidence to support termination pursuant to section 232.116(1)(b). At the time of termination, the children had not seen the father in over a year. They do not remember him and have no bond with him. The father's incarceration does not excuse his failure to take responsibility for the children and to maintain contact with them. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

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<sup>1</sup> The mother filed a notice of appeal, but failed to do so within fifteen days of the termination order as required in Iowa Rule of Appellate Procedure 6.6(4). Her appeal was dismissed by order of the Iowa Supreme Court on June 21, 2007.

We reject the father's claim the State failed to make reasonable efforts to reunify him with his children. It appears, however, that the father is arguing the children should have been placed in the care of his mother, thereby alleviating the necessity for termination. See Iowa Code § 232.116.3(a) (stating the court need not terminate parental rights if the child is in the legal custody of a relative). The home study conducted on the grandmother's home was not accepted by the State of Illinois. We affirm the termination of the father's parental rights.

**AFFIRMED.**