

**IN THE COURT OF APPEALS OF IOWA**

No. 7-531 / 07-0757  
Filed September 19, 2007

**IN THE INTEREST OF M.A.,  
Minor Child,**

**M.J.A., Father,  
Appellant.**

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Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A father appeals a juvenile court order terminating his parental rights.

**AFFIRMED.**

Darren D. Driscoll of Johnson, Erb, Bice, Kramer, Good, Mulholland & Cochrane, P.L.C., Fort Dodge, for appellant father.

Derek Johnson, Fort Dodge, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Timothy Schott, County Attorney, and Sarah Livingston Smith, Assistant County Attorney, for appellee State.

Kurt Pittner, Fort Dodge, guardian ad litem for minor child.

Considered by Miller, P.J., Vaitheswaran, J., and Nelson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**NELSON, S.J.****I. Background Facts & Proceedings**

Michael and Kimberly are the parents of Madison, who was born in 1998. The parents have a history of substance abuse and criminal behavior. In October 2003 the juvenile court placed Madison in the care of her maternal grandmother because the parents were unable to care for her. Michael was in a correctional facility on charges of delivery of methamphetamine and attempted third-degree burglary. Kimberly was then in jail.

On February 18, 2004, in a joint adjudication/dispositional order the juvenile court found Madison was a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c), (j), and (n) (2003). On August 17, 2004, the juvenile court entered a permanency order under section 232.104(2)(d)(1) placing the child in the guardianship of the grandmother. The court found termination was inappropriate at that time because Kimberly was out of jail and the child was able to maintain a relationship with her mother.

In February 2006 Michael was released to a half-way house, and he began to have visits with his child. His last visit was in July 2006. He subsequently became involved in criminal activity. Michael pled guilty to two counts of possession of methamphetamine. He also pled guilty to second-degree theft as a habitual offender.

In January 2007 the juvenile court modified the permanency order and directed the county attorney to initiate proceedings to terminate the parent-child

relationship. At the time of the termination hearing on April 9, 2007, the father was in jail awaiting sentencing on his guilty pleas.

At the termination hearing the father asked to have new counsel appointed for him and to continue the proceedings. The father claimed his appointed counsel had not contacted him often enough and was not prepared. The juvenile court refused the father's requests. The father then asked to be removed from the courtroom. The father's attorney continued to represent him at the termination hearing and called two witnesses on his behalf—his parole officer and the maternal grandmother. The father's attorney also presented a jail sign-in sheet showing he had visited the father in jail and made a professional statement that he had telephoned the father several times.

In the termination order the juvenile court stated, "the Court finds that the father's objections are without merit and that they were made simply to delay the hearing. The Court further finds that delaying the hearing would not be in the best interest of the child." The court terminated Michael's parental rights under sections 232.116(1)(d), (e), (f), (g), and (l) (2007).<sup>1</sup> The court found termination of the father's parental rights was in the child's best interests. Michael appeals.

## **II. Standard of Review**

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the child. *In re C.V.*, 611 N.W.2d 489, 492 (Iowa 2000).

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<sup>1</sup> Kimberly, the mother, consented to termination of her parental rights.

### **III. Ineffective Assistance of Counsel**

Michael contends he received ineffective assistance of counsel. He claims his attorney failed to adequately prepare for the termination hearing and failed to communicate with him. Generally, the test for ineffective assistance claims in termination cases is the same as in criminal cases. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992). We review claims of ineffective assistance of counsel de novo. *In re L.M.*, 654 N.W.2d 502, 506 (Iowa 2002). The elements of a claim of ineffective assistance are (1) counsel's performance was deficient and (2) actual prejudice resulted. *In re C.M.*, 652 N.W.2d 204, 207 (Iowa 2002).

Michael has failed to show his counsel's performance was deficient. Michael's counsel presented a jail sign-in sheet showing he had visited his client. He also made a professional statement that he had telephone contact with Michael. The transcript shows counsel was adequately prepared to present Michael's case at the termination hearing. Michael's counsel presented the testimony of two witnesses and cross-examined the witness for the State. Furthermore, Michael has failed to show he was prejudiced by his counsel's performance. We conclude Michael has not shown he received ineffective assistance of counsel.

### **IV. Continuance**

Michael also claims the juvenile court should have granted him a continuance to allow new counsel to prepare for his case. We review the denial of a motion for continuance for an abuse of discretion. *In re K.A.*, 516 N.W.2d 35, 37-38 (Iowa Ct. App. 1994); *In re B.K.J.*, 483 N.W.2d 608, 611 (Iowa Ct. App.

1992). We find no abuse of discretion in the juvenile court's denial of Michael's motion for a continuance. Michael did not have a valid claim of ineffective assistance of counsel, and a continuance would merely have delayed matters, to the detriment of the child. See *In re T.D.H.*, 344 N.W.2d 268, 271 (Iowa 1983) (noting continuance would have benefited only the parent, not the child).

We affirm the decision of the juvenile court.

**AFFIRMED.**