

IN THE COURT OF APPEALS OF IOWA

No. 7-726 / 07-1365
Filed October 12, 2007

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

**D.M.E., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

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

AFFIRMED.

Angela Y. Gruber-Gardner of Marks Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

John Heinicke of Kragnes & Associates, P.C., Des Moines, for mother.

Nicole Garbis Nolan of Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

A father appeals¹ from the order terminating his parental rights to his two children, born in June of 2005 and May of 2006. He contends the State did not make reasonable efforts toward reunification, his attorney was ineffective in not requesting visitation, and termination is not in the children's best interest. On de novo review, *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002), we affirm.

Reasonable Efforts. The father contends the State did not make reasonable efforts toward reunification because it did not provide any services or visitation to him during his incarceration. Apart from the father's testimony at the termination hearing that he requested visitation but "they wouldn't do it" and that the court would not allow visitation, we find no indication in the record the father requested any different or additional services. Although the State has an obligation to provide reasonable reunification services, the services to be supplied to an incarcerated parent are only those that are reasonable under the circumstances. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). Considering the young age of the children, the nature of the father's parenting deficiencies, the distance between the children and the father, the services available in the prison setting, the lack of any strong parent-child bond, and the length of the father's sentence, we find it was reasonable not to provide visitation at the correctional facility. See *id.* The father's own actions caused his incarceration, making the provision of other services difficult. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). We note the State did provide parenting classes, substance abuse classes, and job skills classes to the father during his

¹ The mother consented to termination of her parental rights and has not appealed.

incarceration, although not as part of this juvenile court action. We find no merit in this claim.

Ineffective Assistance. The father contends he received ineffective assistance of counsel because his attorney failed to request visitation. We apply basically the same test to counsel's actions in a juvenile proceeding that we apply in a criminal proceeding. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992). The father must demonstrate both that counsel's performance was deficient and that prejudice resulted. *In re D.W.*, 385 N.W.2d 570, 580 (Iowa 1986). Assuming for the sake of argument that counsel had a duty to request visitation, the father has not indicated how he was prejudiced by counsel's inaction. The court terminated his parental rights under Iowa Code sections 232.116(1)(d), (e), (g), and (h) (2007). Visitation or the parent-child relationship fostered by visitation have nothing to do with the statutory grounds for termination in sections 232.116(1)(d), (g), or (h). Consequently, the father cannot demonstrate prejudice because these grounds for termination still would exist even if visitation had occurred.

Best Interest. The father contends termination is not in the children's best interest. In determining the immediate and long-term best interests of the children, we consider what the future would likely hold if they were returned to their father. See *In re J.W.D.*, 458 N.W.2d 8, 10 (Iowa Ct. App. 1990). "Insight for that determination is to be gained from evidence of the parents' past performance for that performance may be indicative of the quality of future care the parents are capable of providing." *In re A.J.*, 553 N.W.2d 909, 913 (Iowa Ct.

App. 1996). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

The father has had six founded child abuse reports, including four involving these two children. His parental rights to another child have been terminated. He has had eighteen criminal convictions and numerous charges dismissed under plea agreements in the past ten years. The criminal charges included domestic assaults and drug-related offenses. We find clear and convincing evidence the children's safety and need for a permanent home are best served by termination of the father's parental rights. See *In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002).

AFFIRMED.