

IN THE COURT OF APPEALS OF IOWA

No. 8-398 / 08-0673

Filed June 11, 2008

**IN THE INTEREST OF M.B. and M.B.,
Minor Children,**

**J.A.B., Father,
Appellant.**

Appeal from the Iowa District Court for Cherokee County, Mary L. Timko,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Marvin W. Miller of Miller, Miller, Miller, P.C., Cherokee for appellant
father.

William Cook of Herrick, Ary, Cook, Cook, Cook & Cook, Cherokee, for
appellee mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Ryan Kolpin, County Attorney, and Kristal Phillips, Assistant
County Attorney, for appellee State.

Lesley Rynell of the Juvenile Law Center, Sioux City, guardian ad litem for
minor children.

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

VOGEL, P.J.

James is the father of Makenna, who was born in 2004, and Mason, who was born in 2006. The children first came to the attention of the Iowa Department of Human Services (DHS) in August of 2006 due to allegations of severe abuse by James of Makenna, Mason, and their two older siblings.¹ James later pled guilty to child endangerment based on this incident, and a litany of further abuse by James came to light. The children were adjudicated to be in need of assistance on November 21, 2006, pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (2005). On November 15, 2007, the State filed a petition seeking to terminate James's rights to Makenna and Mason. Following a hearing, the juvenile court granted the State's request and terminated James's rights under sections 232.116(1)(d), (e), (h), and (i) (2007). James appeals from this order.²

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). While the district court terminated 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).

¹ A neighbor reported to the sheriff's department that one of the children had come to their residence stating that James had assaulted one of them and was choking Makenna.

² Mason remains in her mother's care; Makenna resides with her maternal grandmother. The mother filed a responsive brief supporting the State's position as to every issue.

James first claims DHS failed to make reasonable efforts to promote reunification of the family, in particular, by not granting him visitation and by not completing a home study. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). What constitutes reasonable services is based on the requirements of each individual case. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). Here, DHS repeatedly informed James visitation would be dependent on his participation in counseling services. James chose to ignore this directive until after the termination petition was filed. Sometime after the March 2007 dispositional hearing, he moved to Wisconsin, without notifying DHS. He thus chose to distance himself from his children as well as any services offered by DHS. Moreover, he only made the request for a home study less than one month prior to the termination hearing. In light of this, we conclude the State's reunification efforts were reasonable.

James next claims the trial court judge erred when she refused to recuse herself. He complained below that the judge had presided over a case involving another of his children, and asserted that "her own personal interest could cloud her judgment of this case." Without any further evidence in the record showing a conflict or bias, we conclude James did not fulfill his burden of proof to show the type of prejudice that would require recusal. See *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994).

James was still in Wisconsin at the time of the termination hearing, but was allowed to participate telephonically. He testified on direct examination; however, on cross-examination by the guardian ad litem, James became "belligerent and disrespectful" to the court and the guardian ad litem and the

court then disconnected his telephone call. James now asserts his “right to the opportunity to be heard” was thereby violated. We disagree. Our review of the transcript bears out the characterization that James was becoming hostile and disrespectful. Moreover, it appears the proceedings were largely finished and that James was given the opportunity and had fully participated in the hearing. In light of this, we find no error.

Finally, James claims the State failed to prove by clear and convincing evidence the grounds for termination under any of the sections cited. Upon our de novo review of the record, we choose to focus on the facts supporting termination under section 232.116(1)(h). The evidence at trial showed a lengthy and extreme history of physical and mental abuse perpetrated by James upon his children³. The reported instances of abuse on one or more of the children included beatings with a metal cane, belts, wood, and shoes, shooting the children in the head with an airgun, threats to kill them, kicking, whippings, chokings and extreme verbal abuse and threats. These incidents of abuse left an abundance of physical manifestations. Despite the wealth of evidence, including his guilty plea to child endangerment, James persisted in his denials of the abuse. Moreover, by the time of the termination hearing, James had not seen the children for almost two years and had done little to facilitate reunification. To return the children to James’s care would almost certainly subject them to further adjudicatory harm. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (noting a child’s safety is a

³ James has three older children, upon whom the record reflects severe abuse was also inflicted.

paramount consideration). Clear and convincing evidence supports termination of James's parental rights. We therefore affirm.

AFFIRMED.