

**IN THE COURT OF APPEALS OF IOWA**

No. 9-673 / 09-1037  
Filed September 2, 2009

**IN THE INTEREST OF A.K.S.,  
Minor Child,**

**T.A.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A father appeals the termination of his parental rights to his daughter, born in 2004. **AFFIRMED.**

Jeffrey Powell of Tindal Law Office, Washington, for appellant father.

Kathryn Salazar, Washington, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Barbara Edmondson, County Attorney.

Katherine Lujan of Lloyd, McConnell, Davis & Lujan, L.L.P., Washington, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**VAITHESWARAN, P.J.**

Tom appeals the termination of his parental rights to his daughter, born in 2004. He argues: (1) “the court’s determination that the [child] could not be returned to [his] care, is not supported by clear and convincing evidence,” and (2) “the court’s decision to terminate [his] parental rights is not in the best interest of the child.”

*I.* The district court determined that the child could not be returned to Tom’s custody. See Iowa Code § 232.116(1)(h) (2007) (requiring proof of several elements, including proof that child could not be returned to parent’s custody). On our de novo review, we find clear and convincing evidence to support this determination.

Tom was imprisoned for sexually abusing another daughter. Prior to discharging his sentence, he did not complete a treatment program for sexual offenders. While he testified that scheduling difficulties at the prison prevented him from doing so, a counselor with the Mount Pleasant Correctional Facility reported that he neglected to sign up for a group session and needed “continued treatment” following his discharge.

In 2006, the Department of Human Services learned that Tom was living in the same home as A.S. and had unsupervised time with the child. The department issued a founded child abuse report against Tom as well as the child’s mother for permitting Tom to move into the home. Mother and child moved out of the home and the child remained in her mother’s care.

Tom subsequently underwent an evaluation, which resulted in a recommendation that he have “no unsupervised contact with his minor daughter.”

Based on this recommendation, the department only allowed him to have supervised visits with A.S.

Tom was also ordered to participate in sex offender counseling. He regularly attended these sessions until February 2008. At that time, he decided to stop participating.

Around the time that Tom curtailed his therapy sessions, he also had an unsupervised visit with the child. The department obtained an order removing the child from her mother's care and placing her in foster care. The child remained in foster care through the remaining proceedings.

Tom exercised supervised visits for approximately six months. At that point, the district court suspended the visits based on Tom's noncompliance with sex-offender treatment.

The case proceeded to a termination hearing at which a department case manager summarized the agency's history with the family. When asked whether the child could be returned to Tom's custody, she testified:

Tom is a huge risk to [the child]. She's a young child. She completely relies on her caregivers to ensure that she's going to be safe and cared for by people who are safe.

Tom is a registered sex offender. His victim was [the child's] half sibling, so Tom's biological daughter, and he has never completed any sort of sex offender treatment program.

The psychotherapist who provided sex offender counseling also testified. She stated that Tom's conceded attraction to "young children and pre-pubescent girls" was not diminished or eliminated, as Tom did not complete treatment with her.

Tom faults the district court's reliance on this psychotherapist's testimony, as his attorney successfully impugned her recollection of events surrounding a polygraph test. Specifically, the therapist initially testified that Tom did not take a polygraph test and only changed her testimony after the attorney furnished iron-clad evidence that he did.

The district court addressed this discrepancy in the termination ruling, noting that the psychotherapist was "in error" on this point. The court nonetheless refused to discount her testimony that Tom was at a high risk of reoffending. The balance of the record supports her opinion.

Tom also suggests that the department's numerous expectations were difficult to accommodate. He notes that the department insisted he work for at least forty hours per week yet required him to attend out-of-town counseling sessions during work hours without providing transportation assistance.

We agree that the department did not provide transportation assistance despite the case manager's knowledge that Tom's vehicle was not reliable.<sup>1</sup> There is also no evidence that the therapy sessions were scheduled around Tom's work hours. Notwithstanding this record, Tom's failure to ask for help and his unilateral decision to terminate counseling without informing the department lead us to conclude that reversal is not mandated.

**II.** The ultimate consideration in a termination action is the child's best interests. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). On this issue, we fully concur with the district court's determination that "[t]he risk of bodily and

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<sup>1</sup> While the department's case manager testified that the sessions were moved to the town in which Tom lived and worked, the psychotherapist stated that most of the visits took place in a neighboring city.

psychological harm to this young child at the hands of her father is simply too great, and overwhelms any other benefit that she might derive from maintaining a relationship with her father.”

We affirm the termination of Tom’s parental rights to his daughter, born in 2004.

**AFFIRMED.**