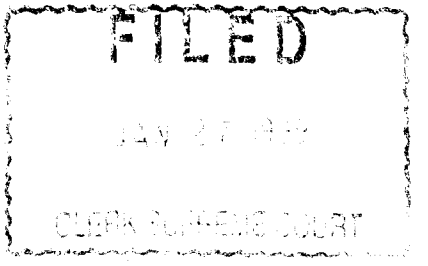
**IN THE COURT OF APPEALS OF IOWA**

No. 8-683 / 98-618
Filed January 27, 1999




**IN THE INTEREST OF J.W., P.W., and M.W.,**
Minor children,

**L.W., Father,**

Appellant.

---

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

Father appeals court order terminating his parental rights to three children.

**AFFIRMED.**

Robert J. Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee.

Robert S. Gallagher of Gosma & Gallagher, Davenport, guardian ad litem for minor children.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

**HUITINK, J.**

Larry and Patsy are the parents of Jacob, born April 1993; Patrick, born April 1995; and Melanie, born February 1996. Larry appeals the decision of the juvenile court which terminated his parental rights to the children. We affirm on appeal.

Larry became involved with social services in Illinois in 1989 when a child in his care was shaken and suffered brain injuries. Two other children in his care also suffered physical injuries. Larry pled guilty to child endangerment. Patsy has an older child and, in 1992, this child was placed in the care of Patsy's mother because Larry threatened the life of the child.

Larry and Patsy moved to Iowa in August 1995. In November 1995, the Department of Human Services (DHS) issued a founded report that Larry had physically abused Jacob. Rather than participate in services, the family moved back to Illinois.

The family again moved to Iowa in August 1996. The same month, DHS received information Larry had physically abused Jacob and Patrick and had shaken Melanie. DHS issued a founded report of physical abuse and denial of critical care against the parents. The children were removed from the parents' care and placed in foster care. The juvenile court adjudicated the children to be children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (g).

After the children's removal, Larry did not participate in services. He had two visits with the children. Larry was sent to prison on a burglary charge in September

1996. He has remained in prison throughout the pendency of the present case. He is not expected to be released until 2001. While in prison, Larry has taken a class called "Thinking for Success." He has not taken any classes on parenting, anger management, batterer's education, or substance abuse.

When the children were first removed from the home, they were very aggressive toward each other, and they were placed in three different foster homes. In September 1996, Jacob and Patrick were placed in the same home, and in February 1997, Melanie was also placed in this home. The children have made great progress in their behavior. Jacob receives individual therapy to help him deal with past issues of abuse.

In December 1997, the guardian ad litem filed a petition for termination of Larry's parental rights. The juvenile court concluded that given Larry's past history of violence and his failure to participate in remedial services, the risk of further abuse and neglect would be extremely high if the children were placed in his care. The court terminated Larry's parental rights pursuant to sections 232.116(1)(c), (d), and (h). Larry has appealed.

**I.** The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

**II.** Larry contends the juvenile court improperly admitted the CINA case file as an exhibit in the termination proceedings when it was not indexed. The juvenile court noted the documents in the CINA case were compiled in a booklet, and the booklet was marked. We determine this is sufficient to meet the requirements for identification of documents found in *In re Adkins,* 298 N.W.2d 273, 278 (Iowa 1980) and *In re D.A.W.,* 552 N.W.2d 901, 903 (Iowa App. 1996).

**III.** Larry sought a continuance because a witness, Officer Marshall Gauer, was unable to appear at the termination hearing. Larry intended to introduce Officer Gauer's testimony to refute facts concerning his history with children in Illinois. The district court denied the motion, finding the proposed evidence was not relevant to the issues in the termination hearing.

An appellate court reviews a motion for continuance under an abuse of discretion standard. *In re C.W.,* 554 N.W.2d 279, 281 (Iowa App. 1996). In order to show an abuse of discretion, a party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.,* 414 N.W.2d 133, 135 (Iowa 1987). The juvenile court did not abuse its discretion under the facts in this case. Larry had an opportunity to challenge the facts in question at the CINA hearings.

**IV.** Larry asserts the juvenile court's failure to grant him a continuance denied him the right to a full and fair hearing, in violation of his due process rights under the Fourteenth Amendment to the United States Constitution. Larry did not

raise this argument before the juvenile court, and we conclude it is not preserved for our review.

**V.** Larry contends DHS did not engage in reasonable efforts to reunite him with the children. He believes DHS should have provided him with more information about his children.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). While Larry did telephone social workers and inquire about his children, most of his conversation was directed toward inquiring about Patsy. Given the fact Larry was in prison throughout most of this case, we find DHS efforts toward reunification were reasonable.

**VI.** After the termination hearing, the Court Appointed Special Advocate (CASA) sent to the court a copy of a letter Patsy had written to Larry. Larry claims this evidence was outside the record, and should not have been considered by the juvenile court.

In this case, only Larry's parental rights were terminated. There was an ongoing CINA case involving Patsy. The letter in question was part of Patsy's CINA case, not Larry's termination case. The letter is not mentioned in the termination order, and there is no evidence to show it was considered by the juvenile court in

Larry's termination case. Furthermore, our review is de novo, and we do not consider the letter.

**VII.** Larry asserts the State did not present sufficient evidence to support termination of his parental rights. Section 232.116(1)(c) requires the court to find both of the following have occurred: (1) the court has previously adjudicated the child to be a child in need of assistance due to physical or sexual abuse or neglect; and (2) the circumstances which led to the adjudication continue to exist despite the offer or receipt of services.

Here, the children were adjudicated CINA due to physical abuse by Larry. Larry did not participate in services during the brief time between the children's removal and when he was sent to prison. Larry has made no progress while in prison in improving his ability to parent the children. For these reasons, we determine Larry's parental rights were properly terminated under section 232.116(1)(c).

**VIII.** When the juvenile court terminates parental rights on more than one statutory ground, we need only find ground to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Since we have already found Larry's parental rights were properly terminated under section 232.116(1)(c), we need not address his claims regarding other code sections.

**IX.** Larry claims termination is not in the best interests of the children. The children should be able to face a future free from physical abuse. As noted above,

there is no evidence to show Larry has made any progress in becoming a better parent for the children. We conclude termination is in the best interests of the children.

We affirm the decision of the juvenile court terminating Larry's parental rights to Jacob, Patrick, and Melanie.

**AFFIRMED.**