

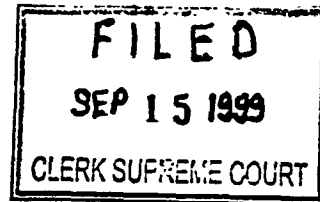
**IN THE COURT OF APPEALS OF IOWA**

No. 1999-239 (9-463) / 99-438  
Filed September 15, 1999

**IN THE INTEREST OF**  
**A.G., and P.G. II,**  
Minor Children,

**P.G. I, Father,**

Appellant.



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Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate  
Juvenile Court Judge.

Father appeals the termination of his parental rights to his two children.

**AFFIRMED.**

Tiffany Hagen, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, and Ray Blase and Emily McConkey, Assistant Polk County  
Attorneys, for appellee-State.

Heather Dickinson, West Des Moines, for minor children.

William Brewer, Des Moines, for mother.

Considered by Streit, P.J., Vogel, J., and Hayden, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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**HAYDEN, S.J.**

Peter and Beth are the parents of Annetta, born in July 1993, and Peter II, born in July 1995. Peter appeals the decision of the juvenile court terminating his parental rights. He claims the State did not present sufficient evidence to support the termination and he was denied the effective assistance of counsel. We affirm on appeal.

In 1994, Annetta was adjudicated to be a child in need of assistance due to her parents' substance abuse. There were also concerns about domestic violence in the home. Annetta was removed from the home, but after the parents were able to provide clean drug tests, she was returned to their care. The case was closed in January 1996.

By August 1996, however, the State had filed a new petition alleging Annetta and Peter II were children in need of assistance. Annetta exhibited symptoms of being sexually abused. The juvenile court issued a no contact order prohibiting Peter from having contact with the children. The Department of Human Services (DHS) issued a founded report of sexual abuse. The children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) (child not receiving adequate supervision) and (n) (parent's drug or alcohol use prevents care of the child).

Beth entered a substance abuse treatment program where the children were able to reside with her. In November 1996, Beth was unsuccessfully discharged from

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the program due to her erratic behavior. The children were removed from her care and placed in foster care.

Peter participated in a psychosocial evaluation. The evaluation found the parents had a history of placing the children at risk by their illicit drug use and their volatile, unstable relationship. The evaluation also found Peter manipulated and exploited others to meet his own needs for power and control, sometimes using sex as a means of manipulation.

In April 1997, the no contact order between Peter and the children was lifted. He began having supervised visits with the children in June 1997. Peter had problems directing the children, and often gave in to their requests. He attended a parenting class.

In December 1997, Annetta told her foster mother she had been sexually abused by Peter. She also disclosed this to her therapist in January 1998. DHS issued a supplemental founded report of sexual abuse against Peter. His visitation with the children was suspended. Peter did not admit to the sexual abuse and did not attend treatment for sexual offenders.

Annetta participates in therapy. She has displayed sexually reactive behavior and has frequent temper tantrums. She has been diagnosed with post-traumatic stress disorder. Peter II also had some problems with temper tantrums, but these decreased substantially after visitation with the parents ceased. The children are in a prospective adoptive home.

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In March 1998, the State filed a petition to terminate the parental rights of Peter and Beth. Beth consented to the termination of her parental rights. The juvenile court terminated Peter's parental rights under sections 232.116(1)(c), (d), (e), and (g). Beth's parental rights were also terminated. The court found the children would continue to suffer adjudicatory harm if returned to their care. Peter 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. Peter asserts the State did not present sufficient evidence to support termination of his parental rights. He believes the State did not adequately prove the children were sexually abused. Peter points out the children were not adjudicated to be children in need of assistance based on sexual abuse. He claims he no longer uses illegal drugs. Peter contends he is now ready to care for the children.

There is clear and convincing evidence to show the children could not safely be returned to Peter's care. The juvenile court specifically found there was sufficient evidence to show Annetta had been sexually abused. Peter has not participated in an evaluation or treatment for sexual abuse. In addition, there are concerns about Peter's past history of substance abuse. When determining whether a child can safely be returned to a parent's custody, the juvenile court gains insight into the child's future from evidence of a parent's past performance. *In re D.C.*, 436 N.W.2d 644, 645

(Iowa App. 1988). Peter's parental rights were properly terminated under sections 232.116(1)(e) and (g).

**III.** When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds 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). Therefore, we need not address Peter's claims regarding sections 232.116(1)(c), and (d).

**IV.** Peter contends he was denied the effective assistance of counsel at the termination hearing.

Due process requires counsel appointed in a termination proceeding to provide effective assistance. *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988). We apply the same standard adopted for counsel appointed in a criminal proceeding. *Id.* A party claiming ineffective assistance of counsel must show (1) counsel's performance was deficient, and (2) actual prejudice resulted. *In re D.P.*, 465 N.W.2d 313, 316 (Iowa App. 1990).

Peter first claims his counsel should not have requested two continuances. He believes he was prejudiced by these continuances because they prolonged the case. The time the children were out of the home was not really a factor in the case. The children had been placed in foster care in November 1996. The termination petition was filed in March 1998. The statutory time lines had already been met when the petition was filed. Peter did not receive ineffective assistance because his attorney obtained two continuances.

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Peter also claims he received ineffective assistance because his attorney failed to call additional witnesses. He asserts the children, the mother, and a physician who examined the children, should have been called as witnesses. There is no right to confrontation in termination hearings. *In re D.J.R.*, 454 N.W.2d 838, 839 (Iowa 1990). Peter was not prejudiced by the lack of testimony from these witnesses.

Peter additionally claims his attorney should have questioned a social worker about a Christmas party he attended with the children. He believes this witness could have testified the children were not afraid of him. There was already testimony from several of Peter's family members concerning the children's lack of fear of him at the Christmas party. Peter was not prejudiced because his attorney failed to elicit testimony from the social worker on this same subject.

We affirm the decision of the juvenile court terminating Peter's parental rights to Annetta and Peter II.

**AFFIRMED.**

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