

**IN THE COURT OF APPEALS OF IOWA**

No. 6-842 / 05-0717  
Filed November 16, 2006

**IN THE INTEREST OF B.S.,  
Minor Child,**

**D.S., Mother,**  
Petitioner,

**C.M., Father,**  
Appellant.

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

C.M. appeals the termination of his parental rights. **AFFIRMED.**

Robert J. Phelps, Bettendorf, for appellant father.

John R. Aitken, Davenport, and Paul Macek, Davenport, for minor child.

Considered by Huitink, P.J., Vogel, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**HUITINK, P.J.**

C.M. appeals the termination of his parental rights. We affirm.

***I. Background Facts & Proceedings.***

On March 4, 2005, attorney John R. Aitken filed a petition pursuant to Iowa Code section 600A.8(3) et. seq. (2003) to terminate C.M.'s parental rights concerning B.P.S. The petition alleged that C.M. was the putative father of B.P.S., D.S. was her mother, and J.S. was the "legal father." Attorney Patrick Kelly was appointed to represent C.M.

Because C.M. was incarcerated in Illinois at the time the petition was filed, the court ordered that notice of the termination proceedings be served on Kelly. After Kelly was served, he forwarded the notice and petition to C.M. at the Illinois correctional facility where he was incarcerated.

The petition for termination of parental rights was reached for trial on April 20, 2005. Aitken appeared on behalf of B.P.S., and Kelly appeared on behalf of C.M. Neither J.S. nor D.S. appeared or otherwise contested termination of their parental rights. After hearing the evidence, the court found C.M.'s arrest, conviction, and resulting seven-year prison sentence precluded C.M. from parenting B.P.S. The court also found B.P.S. should not be required to wait for C.M.'s release from prison before considering permanent placement for B.P.S. The court ultimately concluded C.M.'s criminal conduct and resulting incarceration constituted abandonment. C.M.'s parental rights were accordingly terminated pursuant to Iowa Code section 600A.8(4)(b).<sup>1</sup>

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<sup>1</sup> Although the court cited Iowa Code section 600A.8(4)(b), section 600A.8(3) is the statute governing abandonment.

The only issue C.M. raises on appeal is:

I. Father was denied effective assistance of counsel in violation of the sixth amendment to the United States Constitution.

**II. Standard of Review.**

Appellate review of termination proceedings is de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We review constitutional challenges de novo. *State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998).

**III. Merits.**

There is no procedural equivalent to postconviction relief following proceedings to terminate parental rights. Direct appeal is the only way for a parent to raise an ineffective assistance of counsel claim in a termination case. *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988). No Sixth Amendment constitutional protections are implicated because termination proceedings are civil, not criminal. *In re D.W.*, 385 N.W.2d 570, 579 (Iowa 1986). Regardless, due process requires counsel appointed under a statutory directive provide effective assistance of counsel. *In re J.P.B.*, 419 N.W.2d at 390. We apply the same standard adopted for counsel appointed in a criminal proceeding. *In re D.W.*, 385 N.W.2d at 579.

*Strickland v. Washington*, 466 U.S. 668, 687-98, 104 S. Ct. 2052, 2064-70, 80 L. Ed. 2d 674, 693-700 (1984), requires a party claiming ineffective assistance of counsel show (1) that counsel's performance was deficient and (2) that actual prejudice resulted. If either element is not established, the claim of

ineffective assistance of counsel fails. *State v. Pace*, 602 N.W.2d 764, 775 (Iowa 1999).

C.M.'s ineffective assistance of counsel claim is based on Kelly's failure to depose him or otherwise arrange for C.M.'s personal or telephonic appearance at trial. Even if we assume without deciding that Kelly breached an essential duty in the manner claimed, C.M.'s ineffective assistance of counsel claim fails. C.M.'s conclusory claims of any resulting prejudice are insufficient. See, e.g., *State v. Myers*, 653 N.W.2d 574, 579 (Iowa 2002) (conclusory claims of prejudice are insufficient to satisfy prejudice element). Absent some showing that the outcome of the proceeding would have been different because of C.M.'s deposition or telephone testimony, we are compelled to affirm.

**AFFIRMED.**