

**IN THE COURT OF APPEALS OF IOWA**

No. 0-146 / 09-1804  
Filed March 24, 2010

**IN THE INTEREST OF T.E.C. Jr.,  
Minor Child,**

**T.E.C. Sr., Father,  
Appellant.**

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Appeal from the Iowa District Court for Wayne County, Sherman W. Phipps, Judge.

A father appeals from the order terminating his parental rights. **VACATED AND REMANDED.**

Robert A. Wright Jr. of Wright and Wright, Des Moines, for appellant father.

Amanda Demichelis of Demichelis Law Firm, Chariton, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Alan Wilson, County Attorney, for appellee-State.

Patrick Greenwood, Lamoni, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**DANILSON, J.**

T.E.C., eleven years old at the time of the termination hearing, was removed from his mother's home and adjudicated a child in need of assistance (CINA) on June 12, 2007, due to not receiving adequate care. A case permanency plan was adopted, and the mother received numerous services to remove the adjudicatory harms present in her home. The father does not live in the same city as the mother or T.E.C. and was not involved in services. T.E.C. was placed in Youth Emergency Services and Shelter until September 2007, and was then placed in Four Oaks Family and Child Services until February 2008. In February 2008, T.E.C. entered foster family care in a pre-adoptive home, where he has remained since that time. The record indicates that the father has had very little contact with T.E.C. throughout these proceedings.

Review hearings were held in December 2007, February 2008, and May 2008. A permanency hearing was held in January 2009. The father was not involved in any of these proceedings. On January 16, 2009, the State filed a termination petition.

The termination hearing took place on May 21 and June 8, 2009. The father was not present at the termination hearing. On August 4, 2009, the juvenile court entered an order terminating the mother's and father's parental rights to the child pursuant to Iowa Code section 232.116(1)(f) (2009). After the court's ruling, an issue was raised as to whether the father received notice of the termination hearing.

Although the August 4, 2009 order was never set aside as it pertained to the father, on August 10, 2009, the father was personally served with a copy of the petition for termination of parental rights. The juvenile court received no responsive pleading or motion from the father, and on September 4, 2009, the court proceeded to the “final hearing.” However, there is no record that the father received notice of the date and time of the final hearing on the termination petition.

The father did not appear for the September 4, 2009 hearing. That same day, the court confirmed its order terminating the father’s parental rights, finding that the father “has failed to file any responsive pleadings [to the petition for termination of parental rights], and is in default,” and that termination of the father’s parental rights was in the best interests of T.E.C.

On October 3, 2009, the father filed a motion to set aside the default, alleging he was not served with a copy of the termination petition on August 10, 2009, and had not been provided “information as to the date of the hearing.” On October 19, 2009, the State filed a resistance to the father’s motion. To the resistance, the State attached a copy of the return of service noting that the father had been personally served at his home with the termination petition on August 10, 2009.

On November 11, 2009, after a hearing, the juvenile court overruled the father’s motion, finding he “was timely served with Original Notice of the Termination of Parental Rights Petition on [August 10, 2009] and thereafter failed to file any responsive pleadings herein until the filing of the present Motion to Set

Aside Default.” The father now appeals, arguing that his due process rights were violated because he never received proper notice of the termination hearing.

Iowa Rule of Civil Procedure 1.977 (2009) provides, “[o]n motion and for good cause . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.” In ruling on a motion to set aside a default judgment, the district court is vested with broad discretion and will only be reversed if that discretion is abused. *Sheeder v. Boyette*, 764 N.W.2d 778, 780 (Iowa 2009); *Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 584 (Iowa 1999).

Due process requires sufficient notice of the complaint against the parent and of the time of the hearing. *In re D.E.D.*, 476 N.W.2d 737, 739 (Iowa Ct. App. 1991), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 38-39 (Iowa 2010). Although the record in this case indicates that the father was personally served with the termination petition on August 10, 2009, he was *not* provided any notice of the date and time of the hearing. Due process requirements were not met. *See id.* We therefore find the juvenile court abused its discretion in denying the father’s motion to set aside the default.

We vacate the orders terminating the father’s parental rights and remand to the juvenile court to hold a hearing, after adequate notice to the father, to determine whether grounds to terminate exist.

**VACATED AND REMANDED.**