

**IN THE COURT OF APPEALS OF IOWA**

No. 2-042 / 11-1944  
Filed February 1, 2012

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

**A.M., Mother,**  
Appellant,

**J.B., Father,**  
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother and father separately appeal the juvenile court's ruling terminating their parental rights. **REVERSED AND REMANDED.**

Scott D. Strait, Council Bluffs, for appellant father.

Lori L. Falk-Goss, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn M. Landon, Assistant County Attorney, for appellee State.

Roberta Megel of the State Public Defender's Office, Council Bluffs, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.**

A mother and father separately appeal the juvenile court's ruling terminating their parental rights. The parents assert the juvenile court erred in denying their motion to continue the termination trial for which they did not receive notice and were not present. We review a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

Generally, the State is required by statute to notify parents of termination proceedings. See Iowa Code § 232.112(1) (2011). However, personal notice to parents may be dispensed with by authority of Iowa Code § 232.112(1):

[Living parents of the child] shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search.

Neither parent attended the termination trial, apparently because they each were under the mistaken belief that the child had died in foster care. Each parent had been given notice of the trial by publication. Each parent was represented at the trial by an attorney. The mother's attorney made a motion to continue the trial given the mother's absence and stated the mother may not have known of the trial and asked for a continuance to serve the mother notice of the trial. The father's attorney joined the request for a continuance, asserting the father had not received notice of the trial. The county attorney reported the parents had been evicted from their home and had not provided an updated address to the Iowa Department of Human Services (DHS). The county attorney

stated DHS had no address or phone number by which to contact either of the parents. The record reflects that DHS had some contact with the child's paternal grandparent, but it is unclear whether DHS requested contact information from this grandparent. The record also reflects the parents made several phone calls to DHS shortly before the termination trial, asking for the burial site of their child, and that DHS had been informed of the parents' presence at a local church the day before the trial. The juvenile court found the State had attempted to contact both parents in "the best way possible" and overruled the motion to continue.

Given the record before us, we are unable to conclude the State made "a reasonably diligent effort" to notify the parents of the termination proceeding. See Iowa Code § 232.112(1). The record contains no proof of mailing, affidavit, or transcript of testimony detailing efforts made to notify the parents of the trial. See Iowa R. Civ. P. 1.1311. Nor is there any indication the parents independently knew of the proceedings. *Cf. In re J.F.*, 386 N.W.2d 149, 151–152 (Iowa Ct. App. 1986) (noting father who learned of CINA proceedings and intervened waived right to later have dispositional order vacated). Further, in overruling the motion to continue, the juvenile court did not make a finding that the State had conducted a reasonably diligent search for the parents' whereabouts. Rather, the juvenile court found the State "attempted to contact both parents the best way possible." We conclude such a finding is insufficient to support the juvenile court's decision to dispense with the section 232.112(1) notice requirement in this case. Because we remand on statutory grounds, we find it unnecessary to reach the parents' constitutional arguments regarding notice. See *Qualley v. State Fed. Sav. & Loan*, 487 N.W.2d 353, 355 (Iowa Ct.

App. 1992). We remand this case to the juvenile court for further proceedings consistent with this opinion. Because we reverse and remand on this issue, we decline to reach the other issues raised.

**REVERSED AND REMANDED.**