

**IN THE COURT OF APPEALS OF IOWA**

No. 2-080 / 11-2059  
Filed February 15, 2012

**IN THE INTEREST OF E.P. and S.P.,  
Minor Children,**

**J.P., Father,**  
Appellant.

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Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Stephanie C. Rattenborg of Rattenborg Law Office, Manchester, for appellant father.

Mary Beth Fleming, Dubuque, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph R. Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee State.

Dustin A. Baker, Dubuque, for minor children.

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

**DOYLE, J.**

A father appeals from the order terminating his parental rights to his children. We review his claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

J.P. is the father and H.P. is the mother of E.P., born in April 2006, and S.P., born in February 2008. The father has a history of violent behavior and criminal activity, including charges for domestic abuse, criminal mischief, and burglary. He has been incarcerated in prison six separate times and has spent about fifteen years in prison. Additionally, the father has a history of mental illness and has been diagnosed with intermittent explosive disorder and antisocial personality disorder.

The family came to the attention of the Iowa Department of Human Services in 2008 due to issues concerning the mother. The father was incarcerated at that time. Services were provided to the mother, and the case was closed in 2009.

In April 2010, shortly after the father was discharged from prison, the family again came to the Department's attention due to concerns about the parents' physical discipline of the children. Although the discipline report was determined to be unfounded, the Department's caseworker had many concerns about the parents' ability to safely parent the children, including the father's history of violence and the father's report that the mother had been using illegal substances. Hair stats were completed on the children and the parents. The father tested positive for marijuana, the mother for cocaine, and S.P. for cocaine.

A safety assessment was completed, and safety services were put in place. Due to continuing safety concerns, the children were removed from the parents' care and placed in foster care in May 2010. Services continued to be offered to the parents. However, the caseworker observed the father had "a lot of inappropriate conversations" with the children, including talking about getting high and being drunk. The father had trouble controlling his emotions in front of the children, especially his anger. The father was observed to have very little patience with the children, even ending a visit early because he could only handle their behaviors for one to two hours. Additionally, the father's drug tests continued to test positive for marijuana and on one occasion tested positive for methamphetamine.

During the pendency of the case, the father made threats to the mother, the caseworker, the service providers, and even the children's foster parents. As an example, he threatened he would find the mother and put her through a wood chipper. Visits were moved from the father's apartment to the service provider's facility because service providers felt unsafe with the father. The father was told to stop his threatening behavior. Nevertheless, the father continued to make threats. He was eventually charged with terrorism and arrested on May 14, 2011. The father ultimately pled guilty to harassment in the first degree and was placed in jail. The Department's requirement to provide reasonable-effort services to the father was then suspended, and he did not participate in any services while in jail. During this incarceration the father incurred an assault charge and was placed in "the hole" three different times due to his outbursts and loss of temper.

On October 25, 2011, the State filed its petition to terminate the father's parental rights. The father was released from jail on November 9, 2011. After his release, he had a mental health evaluation scheduled but missed the appointment.

Hearing on the petition was held on November 18 and 27, 2011. The father requested additional time for reunification, but admitted the place where he was staying might not have been approved for the children's visits. He testified he had not used any illegal drugs since spring. He had rescheduled his mental health evaluation. He wanted additional time "to show that [he could] make progress and that [he is] serious about doing this."

The current Department caseworker testified the father seemed generally motivated; however, he agreed the father's parental rights should be terminated, explaining:

This family and [the father have] been involved with the Department since June of 2008, and though [the father's] actions didn't involve the Department to initiate that contact, he certainly prolonged it in his history of criminal acts, substance abuse, mental instability over the . . . majority of [the father's] life, I don't believe can be changed if he was granted a six-month extension period of time.

On December 5, 2011, the juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code § 232.116(1)(f) and (h) (2011).

The court explained:

The court believes extensive time and improvement would be needed before the father would even qualify to have reasonable effort services reinstated, let alone progress to the point that the father could safely have the children placed with him. Accordingly, the court is unable to determine that the need for removal of the children from the father's home would no longer exist at the end of an additional six-month period as required by Iowa Code sections

232.117(5) and 232.104(2)(b). . . . [T]he court has already granted an extension of time with no progress made by either parent.

The father now appeals. He does not dispute the State proved the grounds for termination by clear and convincing evidence. Instead, he argues the guardian ad litem's failure to disclose a conflict of interest until just prior to the termination hearing denied him a fair hearing and due process. Additionally, he contends the juvenile court denied the father a fair trial and due process by failing to grant him additional time for reunification "at which time the father was confident the children could be returned to his care."

Our supreme court has held that "[c]onstitutional questions must be preserved by raising them at the earliest opportunity after the grounds for objection become apparent." *In re C.M.*, 652 N.W.2d 204, 207 (Iowa 2002). "Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal." *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003).

Here, there is no record for us to review on the asserted guardian ad litem claim. The father did not seek any information regarding the conflict of interest, and he did not request a hearing on the withdrawal of counsel. He has provided no information when the alleged conflict arose, when it was discovered, or what it even was. Upon our review, we conclude the father failed to preserve his claim concerning the guardian ad litem's alleged failure to disclose a conflict of interest.

We similarly conclude the father failed to preserve his claim that the juvenile court denied him a fair trial and due process by failing to grant him additional time for reunification because he did not raise the issue before the

juvenile court and the issue was not ruled upon by the court. However, even if error had been preserved on this issue, we would not find the father was denied due process or a fair trial on this claim.

The father asserts he had been “mouthing off” during the entirety of the case, but despite his continuing threats, he “had never followed through with any overt actions against [the] case workers or providers.” He is critical of the timing of the Department’s report to the police of his threatening behaviors. He claims he had been making steady progress and “[i]t was fundamentally unfair for the Department of Human Services to wait until just prior to permanency to take action on allegations that had existed since the initiation of the case.” Thus, he contends, the court was required to give him extra time for reunification. We are not persuaded.

Here, the caseworkers and service providers explained to the father the inappropriateness of his threatening comments, and they told the father he needed to stop his threatening behavior. Yet, the father continued. He was subsequently charged for his actions, to which he pled guilty for harassment. The father’s actions and bad timing are his own fault. We cannot conclude he was deprived of fundamental fairness because the court denied him additional time after he had been incarcerated prior to permanency for violating the law. Accordingly, we affirm the ruling of the juvenile court terminating the father’s parental rights.

**AFFIRMED.**