

**IN THE COURT OF APPEALS OF IOWA**

No. 8-199 / 08-0218

Filed April 9, 2008

**IN THE INTEREST OF J.S. and N.S.,  
Minor Children,**

**T.A.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals from the order terminating his parental rights to two children. **AFFIRMED.**

Francis Hurley, Des Moines, for appellant father.

Chira Corwin, Des Moines, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Corey McClure Assistant County Attorney, for appellee State.

M. Kathryn Miller, Juvenile Public Defender, Des Moines, for the minor children.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**BAKER, J.**

Timothy is the father of Nathaniel, who was born in 2003, and Jonathan, who was born in 2005. On June 22, 2006, the children were removed after it was discovered that Jonathan had suffered severe physical trauma, including a non-accidental skull fracture while in the care of either Timothy or the children's mother, Paula. The parents later stipulated to a finding that the children were in need of assistance (CINA). The children were later returned to their parents' home; however, less than one month later, they were again removed after Jonathan again suffered similar injuries and almost died. On March 8, 2007, the children were again adjudicated CINA.

On December 21, 2007, the State filed a petition seeking to terminate Timothy's parental rights to both Nathaniel and Jonathan. Following a hearing on the petition, the court granted the State's request and terminated Timothy's parental rights under Iowa Code sections 232.116(1)(d), (f), and (h) (2007). Timothy appeals from this ruling.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

In a March 8, 2007 adjudicatory order, the juvenile court first found that Timothy had physically abused Jonathan and caused his physical injuries. Timothy first claims there is insufficient evidence for the court to find he caused Jonathan's injuries. He asserts the court discounted evidence that others could have inflicted the injuries. The State counters that because Timothy did not timely appeal from the adjudicatory order, he has not preserved this contention for appellate review. While clearly no appeal was taken from the adjudicatory order, the court's subsequent termination order was largely informed by and based on the finding Timothy caused Jonathan's injuries. Thus to the extent Timothy now maintains the evidence of abuse was insufficient to satisfy the statutory prerequisites for termination, we find the issue preserved for our review and address it.

Upon our de novo review of the record, we concur in the juvenile court's determination that Timothy's abuse of Jonathan supports the termination of his parental rights. To return either child to Timothy's care would potentially subject them again to life-threatening abuse. The injuries were non-accidental and the result of significant force. During the timeframe of the earlier injury, the parents reported they were the only individuals caring for Jonathan when the injuries would have occurred. However, they could give no plausible explanation for how the injuries occurred. Again, Timothy was present just prior to Jonathan's second injuries. Timothy's explanation that the skull fracture occurred as a result of horseplay with Nathaniel is inconsistent with the medical evidence. Jonathan's mother previously had made reports to DHS of Timothy's excessive force in trying to quiet a crying Jonathan.

We also reject Timothy's claim that "the assumption that [he] caused Jonathan's injuries can only be based on the fact that he is a man." The juvenile court responded to this assertion, making an explicit finding that it "has not assumed that [Timothy] is the perpetrator just because he is a male." Moreover, Timothy offers no evidence to support this assertion, and regardless, as we have noted above clear and convincing evidence supports that he caused each injury.

Timothy next claims a violation of his due process rights occurred. At the time of the termination hearing, he was facing criminal charges based on Jonathan's second set of injuries. He argues, without citation to authority, that he was "faced with an impossible choice," in that he was forced to admit to guilt in order to participate in services. As the State notes, the record is silent as to whether the Department of Human Services ever conditioned its provision of services to Timothy on his admission of guilt to the abuse. The record does not show that he ever raised this concern prior to the termination hearing. See *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000) (stating parents need to object to services early in the process). Regardless, we would conclude no due process violation occurred. A case permanency plan that generally requires a certain treatment, without specifying in the plan that an admission of guilty must accompany it, has been held appropriate. *In re C.H.*, 652 N.W.2d 144, 150-51 (Iowa 2002).

Finally, Timothy also asserts a due process violation based on the juvenile court's denial of funds for experts and depositions. In particular, he requested the court to authorize him to hire an expert to render an opinion on the timing of the second injury and whether Nathaniel had been "unduly influenced" when he

stated he witnessed Timothy injure Jonathan. However, this issue did not arise until the morning of the termination hearing, and it went to matters that had already been adjudicated.

Counsel also requests that we appoint him Timothy's appellate attorney and order the Public Defender's Office to pay him a reasonable fee. This issue was not addressed by the juvenile court, Timothy cites no authority for this request, and the State fails to even address this issue. The original notice served upon Timothy provided:

In Child in Need of Assistance Proceedings, the parent or guardian also has the right to an attorney. If you are entitled to an attorney but are financially unable to employ one, an attorney will be appointed for you upon completion and return of an application to the Clerk's Office, Polk County Courthouse, Des Moines, Iowa 50309.

No such request or application was filed below. As no request was made, this issue is waived. See *In Interest of S.R.*, 548 N.W.2d 176, 180 (Iowa App. 1996).

**AFFIRMED.**