

IN THE COURT OF APPEALS OF IOWA

No. 8-383 / 97-1292

Filed August 28, 1998

**IN THE INTEREST OF
S.L.S., T.L.S. and A.J.S.,**
Minor Children,

L.S., Father of A.J.S.,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
Associate Juvenile Judge.

A father appeals from the termination of his parental rights claiming he was
not given sufficient notice of the termination proceedings. **DECISION VACATED.**

Richard Kallsen, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee State.

Marchelle Roberts of the Juvenile Law Center, Sioux City, for minor children.

Considered by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

Robin is the mother of Aaron, born in July 1990. The birth certificate lists George as the father. This is an appeal by Laurence, the putative father, challenging the termination of his parental rights.

In December 1993, when the Department of Human Services (DHS) issued a founded report Aaron had been sexually abused by Robin's husband, Stephan, DHS apparently believed Stephan was Aaron's father. In August 1995, when the State filed a petition to find Aaron a child in need of assistance, the petition listed Sonny as Aaron's father.

In November 1995, Robin informed social workers Laurence was Aaron's father and that he was in prison in Illinois for armed robbery. He will be released in the year 2000, at the earliest. DHS was unable to contact Laurence directly, and had no contact from him.

In May 1997, the State filed a petition to terminate the parental rights of Robin, George (legal father), and Laurence (putative father). The petition was sent to Laurence at the Pontiac Correctional Facility. The notice was returned as "unclaimed."

In preparing the DHS termination report, a social worker contacted the Pontiac Correctional Facility, which informed her Laurence was at the Illinois River Correctional Facility. DHS prepared a new case permanency plan in May 1997, which asked Laurence to make contact with DHS. The case permanency plan and

termination report were sent to Laurence at the Illinois River Correctional Facility. Laurence received these documents.

In June 1997, notice regarding the pretrial conference was sent to Laurence at the Illinois River Correctional Facility. This notice was returned because it lacked an institutional number.

The termination hearing was held in June 1997. Laurence had not contacted DHS prior to the hearing. On June 12, 1997, the juvenile court terminated Laurence's parental rights pursuant to Iowa Code sections 232.116(1)(b), (c), (d), (e), and (h). A copy of the termination was sent to Laurence.

On July 2, 1997, Laurence filed a petition to establish parental rights. He also filed a general entry of appearance and a motion to proceed in forma pauperis. He asked for a blood test to determine the paternity of Aaron. The juvenile court appointed an attorney for Laurence. Laurence appealed the termination of his parental rights.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994).

Laurence contends his parental rights were improperly terminated because he did not receive notice of the termination. Section 232.112(1) provides that living parents of a child are entitled to receive notice of termination proceedings and an opportunity to be heard. A known putative father is entitled to notice and a hearing

before his parental rights can be terminated. *Catholic Charities v. Zalesky*, 232 N.W.2d 539, 545 (Iowa 1975).

This issue is raised for the first time on appeal. Generally, issues raised for the first time on appeal, even those of constitutional dimensions, will not be considered. *Soike v. Evan Matthews & Co.*, 302 N.W.2d 841, 844 (Iowa 1981). The reason for this rule is because a failure to make a challenge in a timely manner before the trial court leaves nothing for the appellate courts to review. *State v. McCright*, 569 N.W.2d 605, 608 (Iowa 1997).

The error preservation rule is not applicable, however, where the court's action is void. *Id.* A judgment may be considered void where the court acted without or in excess of its jurisdiction. *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa App. 1992). A judgment is void where it is rendered in violation of due process of law. *Id.* Where a judgment is void, the matter stands as though no judgment had been rendered. *Miller v. Farmers Coop. Co.*, 176 N.W.2d 832, 836 (Iowa 1970).

Where jurisdiction is sought by a challenged original notice, the question becomes whether any flaw in the notice amounts to a substantial defect or to a mere irregularity. *Morris Plan Co. v. Bruner*, 458 N.W.2d 853, 857 (Iowa App. 1990). A substantial defect renders an original notice fatally defective and any judgment based on it is void. *Id.* Notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them a

reasonable opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed.2d 865, 873 (1950).

Under section 232.112(1), Laurence was entitled to notice of the termination proceedings. The question in this case is whether the notice to Laurence was substantially defective. We determine notice in this case was inadequate. The notice of termination, sent to the Pontiac Correctional Facility, was returned “unclaimed.” Soon afterward, DHS learned Laurence was at the Illinois River Correctional Facility. No effort was made to send a notice of termination to him at this address, although other documents were sent to him there, and were received. The notice to Laurence was substantially defective and the juvenile court decision, as to him, was void. Therefore, Laurence could properly raise this argument for the first time on appeal.

We conclude the juvenile court decision terminating Laurence’s parental rights should be vacated due to lack of proper notice to Laurence. The juvenile court decision stands as to other parties who were not part of this appeal. Furthermore, we make no findings on the merits of the case.

DECISION VACATED.