

IN THE COURT OF APPEALS OF IOWA

No. 3-959 / 12-1342
Filed November 6, 2013

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

**K.S., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

K.S. appeals the district court's dismissal of his petition to vacate the 2008 order terminating his parental rights. **AFFIRMED.**

David A. Kuehner of Eggert, Erb, Mulcahy & Kuehner, P.L.L.C., Charles City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Tabor and Mullins, JJ.

PER CURIAM.

A father, K.S., appeals the district court's dismissal of his pro se petition to vacate the juvenile court's 2008 order terminating his parental rights to his child. K.S. claims he has a right to a hearing on the merits of his petition, because, on appeal, he characterizes his petition as asserting fraud. We agree with the district court K.S. failed to show a basis on which relief could be granted, and therefore we affirm.

On October 23, 2008, K.S.'s parental rights were terminated to his child. He did not appeal the final decision. He nonetheless continued to file various motions with the supreme court. By order dated February 19, 2009, the supreme court notified K.S. that he had exhausted all opportunities under the Iowa Rules of Appellate Procedure to contest the termination, and that it would not consider any further motions on the matter.

On July 12, 2012, four years after the termination order, K.S. filed a pro se petition with the district court requesting the order terminating his parental rights be vacated. The substantive portions of the petition stated:

One of the supportive factors used in the petition for terminating my parental rights was that I would not be released from prison within five years, which has turned out to be false.

Other supporting factors used in the petition for terminating my parental rights were maliciously misstated; and because of the sole fact that I was in prison, I was unable to present my evidence that would have proven the allegations used in the petition was grossly false.

Newly discovered evidence has been gathered to support all the above. [exhibits are not attached]

The district court, sua sponte, denied the petition, stating K.S.'s "parental rights were terminated in 2009 with the final Procedendo being received by this court

on June 9, 2009. The relief sought in [K.S.'s] petition is unavailable, and the court will consider no more filings by [K.S.] in these proceedings.” K.S. appeals, claiming he has a right to a hearing on the merits of his petition, because he now characterizes his petition as asserting fraud.

We review a ruling on a dismissal of a petition for correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). A dismissal may be granted when the allegations in the petition, taken as true, fail to state a claim upon which relief may be granted. *Id.* Further, when alleging fraud, the petitioner must plead specific facts supporting the claim. *Luddington v. Moore*, 155 N.W.2d 428, 431 (Iowa 1968).

Iowa Code section 232.117(2) (2011) grants the supreme court the authority to prescribe rules governing appeals from termination orders. Iowa Rule of Appellate Procedure 6.101(1)(a) provides that an appeal from an order terminating parental rights, entered pursuant to chapter 232, must be filed within fifteen days of the order. A petition to vacate an order terminating parental rights, whether from a termination under Chapter 600A or Chapter 232, is governed by Iowa Code section 600A.9(2). See *In re F.E.Z.*, 434 N.W.2d 912, 914 (Iowa Ct. App. 1988). That code section states a parent has thirty days in which to file a petition to vacate the order terminating parental rights, and that period “shall not be waived or extended and a vacation or appeal shall not be granted after the expiration of this period.” Iowa Code § 600A.9(2). Additionally, a vacation request will only be granted if it is in the best interest of the child. *Id.*

We agree with the district court that K.S.'s petition should be denied, as he failed to show a basis on which relief could be granted. While not foreclosing the

possibility that fraud in a termination proceeding may lead to vacation of an order, see *In re E.C.G.*, 345 N.W.2d 138, 141 (Iowa 1984), K.S. did not allege fraud in his petition. Rather, he relies on this contention in his appellate brief, which does not form a basis for relief. See *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) (“Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.”). Moreover, his petition fails to include any facts that, if proved, would show that an exception to the thirty-day time limit applies, and that vacation is in his child’s best interest. Therefore, we affirm the district court’s dismissal of his petition pursuant to Iowa Rules of Appellate Procedure 21.26(1)(a) and (e).

AFFIRMED.