

# In re Interest of Angeleah M. & Ava M.

**Caselaw No.**

A-13-1060

**Filed on**

Tuesday, July 15, 2014

**SUMMARY:** Termination of the father's parental rights was improper because while he violated his parole and was returned to prison, the violation was only due to failing to visit his parole officer, and he had regular visits with the children prior to re-incarceration and had supported the children reunifying with the mother. It was not a violation of due process for the State to amend the petition to add one of the children since the father was served with the amended petition and had the opportunity to respond and cross-examine witnesses.

Angeleah, born in 2008, and Ava, born in 2009, were removed from the mother's home in March 2011 due to drug use and shoplifting in the girls' presence. The children were adjudicated and several review and permanency hearings were held in 2011 and 2012. D'Angelo was in prison and released in the summer of 2012. He contacted the caseworker who advised him to request an attorney and attend the November 2012 hearing, which he did. D'Angelo was granted supervised visits, which he attended regularly until April 2013, when he was arrested on violation of parole for missing three meetings with his parole officer. He was incarcerated through trial but indicated at trial that he'd be released in a few months. The children had been returned to the mother's home but removed again in April 2013, and she eventually relinquished her rights.

On May 17, 2013, the State filed a "Second Supplemental Petition and Motion for Termination of Parental Rights of D'Angelo E." Although it was captioned with both girls' names, only Ava was referenced in the allegations. The State initially indicated that paternity had only been established as to Ava before clarifying that paternity had been established as to both girls, after the case had proceeded to trial. At trial in August 2013, the caseworker testified D'Angelo was consistent in his visits and that there were no safety concerns. The children had been living with the mother while D'Angelo had visits and he supported the children being reunified with her. The court allowed the State to amend its motion to properly reflect Angeleah and Ava; however, no amended motion was provided to the appellate court. At the continued hearing on October 24, 2013, the State indicated it had served D'Angelo with the amended motion and neither D'Angelo nor his attorney indicated otherwise. The caseworker again testified. D'Angelo also testified that he called his children while he was first incarcerated, that DHHS didn't contact him except for one letter in March or April 2011, and that his missed parole visits were due to work, transportation and school. On November 1, 2013, the juvenile court terminated D'Angelo's parental rights to both children. D'Angelo appealed.

The Nebraska Court of Appeals affirmed in part and reversed in part. As to the filing of the TPR motions and due process issues, the Court of Appeals noted that the August 2013 trial included testimony on the best interests of both children, not just Ava, and that D'Angelo's argument focuses on the failure to file the amended document. Because juvenile cases are civil in nature, it is not necessary for amended pleadings to be filed (although it is best

practice). Therefore, the court focused on whether D?Angelo?s due process rights were protected and found that D?Angelo was given notice of the proceeding, was represented by counsel at all proceedings and that the judge was impartial and he was therefore provided with procedural due process. The Court of Appeals did verbally reprimand the attorneys for not including the interlineated amended motion in the record to the Court of Appeals. As to termination of parental rights, the Court of Appeals found that 43-292(7) was satisfied because the children had been out of home more than 15 of the past 22 months. However, at to best interests, the Court of Appeals noted D?Angelo?s testimony that he regularly called the children while incarcerated, called the caseworker once released from prison, regularly attended visits while out of prison and was re-incarcerated because of missing meetings with his parole officer, not because of a new crime or drug use. D?Angelo was also set to be released fairly soon after trial. The Court of Appeals concluded there was neither clear and convincing evidence to terminate parental rights nor evidence to prove that D?Angelo was an unfit parent.

### **Tags**

amended,  
Angeleah,  
Ava,  
due process,  
D?Angelo,  
imprisoned,  
incarcerate,  
incarcerated,  
interlineated,  
interlineation,  
jail,  
motion,  
parental rights,  
parole,  
petition,  
pleading,  
prison,  
procedural,  
rights,  
terminate,  
termination,  
violate

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