

dismissed. He asserts that proceeding with this matter was unfair because he would have been entitled to court-appointed counsel in a CHINS case.* There was no error in declining to dismiss the RFA because the State decided not to initiate a CHINS proceeding. An RFA proceeding is civil action between individuals. The purpose of an RFA is to “provide immediate relief from intrafamily violence as well as to protect victims from future abuse, rather than to hold perpetrators liable for past acts of violence.” *Id.* ¶ 8. It is wholly separate from a CHINS proceeding, which is initiated by the State and focuses on the welfare of the child. See 33 V.S.A. § 5309(a) (explaining that CHINS petition is filed by state’s attorney); *In re C.P.*, 2012 VT 100, ¶ 28, 193 Vt. 29 (stating that “welfare of the child” is focus of CHINS proceeding). The filing of one type of case does not depend upon the existence of the other.

Defendant also contends that the trial judge had a conflict that required recusal based on a vague claim that the judge previously presided over a case involving plaintiff’s witness and ruled against defendant in this case. Defendant does not provide details about which witness or what type of case was involved. At the RFA proceeding below, defendant did not seek the judge’s recusal; therefore, he has failed to preserve his argument for appeal. *O’Rourke v. Lunde*, 2014 VT 88, ¶ 17, 197 Vt. 360 (“Generally, issues that are not presented to the trial court cannot be raised on appeal.”). Moreover, the judge’s recusal was not compelled by the mere fact that the judge presided over a case involving one of plaintiff’s witnesses or that the judge ruled against defendant. See *Ainsworth v. Chandler*, 2014 VT 107, ¶¶ 15, 16, 197 Vt. 541 (stating that courts enjoy “presumption of honesty and integrity,” that moving party has burden to show otherwise, and adverse ruling “does not, in itself, constitute evidence of bias”) (quotation omitted)). Defendant failed to meet his burden of showing a conflict here.

Defendant also contends that juvenile’s attorney had a conflict of interest because the attorney had represented plaintiff in the past and that the court should have appointed a different attorney for juvenile. Defendant fails to demonstrate that he preserved this argument for appeal by objecting below or moving to have different counsel for juvenile. The transcript reveals that juvenile testified at the hearing and defendant made no objection to juvenile’s representation at the hearing. Therefore, this argument was waived and we do not address it.

Defendant asserts that the RFA is invalid because it affects his Second Amendment Constitutional Rights and that the proceeding was more akin to a criminal process that would entitle him to an attorney. At oral argument, he also generally argued that the RFA process was unconstitutional. Defendant did not raise these arguments below and they are therefore not preserved for appeal. See *O’Rourke*, 2014 VT 88, ¶ 17.

Finally, the law does not support defendant’s argument that he was entitled to trial by a jury and that the proper standard of proof should have been beyond a reasonable doubt. The RFA statute plainly states that the standard of proof in these cases is a preponderance of the evidence. 15 V.S.A. § 1103(b). Even assuming that a trial by jury was available to defendant in this type of proceeding, defendant failed to invoke his right below and therefore has waived the

* We need not address whether defendant would have been entitled to party status or to representation by counsel if a CHINS action had been initiated.

right. Bloomer v. Gibson, 2006 VT 104, ¶ 9, 180 Vt. 397 (“Failure to serve and file a demand as required by [Vermont Rule of Civil Procedure] 38(b) is a waiver of the right to trial by jury.”).

Affirmed.

BY THE COURT:

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice