FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.M., A Child.	)	
A.M. and **S.M.**, Parents,	)	9-255 89-201
Appellants.		

Appeal from the Iowa District Court for Linn County (JT 745-1088), Sylvia Lewis, Juvenile Referee.

The parents of a child appeal from the juvenile court order terminating their parental rights. **AFFIRMED.**

Mark C. Meyer, Cedar Rapids, for the appellant parents.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Robert Kimm, Assistant County Attorney, for the appellee State.

Richard Feeney, guardian ad litem, for the child.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J. 198

The sole issue to be determined on this appeal by appellants A.M. and S.M. from the termination of their parental rights is whether they knowingly, intelligently and voluntarily waived their right to be personally present at the termination hearing. We affirm.

Our review is de novo. We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986).

There is no dispute the parents were personally served with the petition for termination on October 18, 1988. They were aware of the hearing to be held on January 4, 1989, and neither parent attended the hearing. The parents' attorney, the child's attorney guardian ad litem along with the assistant county attorney and several witnesses were present. The parents' attorney, when questioned about their absence, stated he had received a phone call the morning of the hearing indicating the mother was sick and neither would be attending the hearing. He also stated the parents had previously been intending to appear to voluntarily consent to the termination and he still believed they were agreeable to such a termination. The court then heard all the evidence and ordered termination of parental rights on the grounds currently found in Iowa Code section 232.116(1)(e) (1989) rather than a voluntary termination.

On appeal the parents point to no state or federal authority requiring their presence at a termination hearing. They argue the due process clause of the federal and state constitutions have been interpreted to give them a right to be present at such hearing and absent an express knowing and intelligent waiver of this right, a remand is necessary to allow them an opportunity to defend the termination. See generally Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 1022 (S.D. Iowa 1975), aff'd. 545 F.2d 1137 (CA8 Iowa); In Interest of K.L.C., 372 N.W.2d 223 (Iowa 1985); U.S. Const. amends., V, XIV; Iowa Const. art. I §§ 9, 10.

We agree their rights to due process and the Iowa Code requires parents be given notice and an opportunity to be heard during such proceedings. Iowa Code § 232.112 (1987). The parents were represented by counsel at the hearing. Their attorney spoke with the parents the same morning of the hearing and, although they decided not to attend because S.M. was ill, they apparently did not request a continuance or give him any indication they were now against the termination. Such silence can properly be considered waiver especially given the fact their counsel was present at the hearing. See generally In Interest of J.F., 386 N.W.2d 149, 152 (Iowa App. 1986); In Interest of L.P., 370 N.W.2d 839, 841 (Iowa App. 1985). If a

continuance had been requested and denied or their attorney had not been present, we would be faced with a different issue.

We find it clear, based on the facts of this case, the parents were given an opportunity to be heard and they, in effect, waived this opportunity. All statutory procedural requirements were followed and the grounds for termination are not appealed. The termination of A.M.'s and S.M.'s parental rights is affirmed.

AFFIRMED.