FILED
DEC 31 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-366 / 91-476

IN THE INTEREST OF B.G.C., A Child,

C.C., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Linn County, Robert Sosalla, District Associate Judge.

Natural mother appeals the juvenile court's denial of her posttrial motions after a hearing terminating her parental rights. **REVERSED IN PART AND REMANDED.**

Jacqueline Miller of Dolezal, Miller & Garrels, Cedar Rapids, for appellant.

Gary L. Robinson of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for appellees (R.D. and J.D., the prospective adoptive parents).

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

At 7:02 p.m. on February 8, 1991 (a Friday), an unmarried woman, C.C., gave birth to a baby girl. Sometime before birth, the mother told her doctor she wanted to give the baby for adoption. Two days before the birth, Attorney John Monroe contacted the mother. He told her he represented a couple, R.D. and J.D, who desired to adopt her baby. Attorney Monroe confirmed the mother's desire to place the baby for adoption.

At about 10:00 a.m. on February 10, (a Sunday), Monroe visited the mother at the hospital. She again confirmed her desire to place the baby for adoption. He gave her a release of custody form. The mother read the release. She signed it at 10:20 a.m., in the presence of Monroe and two nurses.

The mother let it be known that S.S. was the father of her child. S.S. likewise signed a release of custody form in the presence of two witnesses. The body of the release alludes to his parenthood of the child.

Because of its relevancy, we set forth the release signed by the mother. The original releases set forth the full names of the parties. Where the underlines appear, we have deleted the names and substituted initials. S.S.'s signed release is in the same form as C.C.'s.

> COMES NOW, C.C., mother of B.G.C., a minor child, and does hereby release the custody of said B.G.C., the minor child born on the 8th day of February, 1991, to John C. Monroe.

The specific purpose of this Release of Custody is to permit said minor child to be placed for adoption and C.C., by signing herein, specifically acknowledges that unless revoked, this Release of Custody may be grounds for termination of the parent/child relationship currently existing between the child and the undersigned. The parent further acknowledges that she has been fully and completely advised of the purpose of this release and of the fact that it may be grounds for termination of the parent/child relationship. This Release of Custody is hereby executed this 10th day of February, 1991, at 10:20 o'clock A.M. at Cedar Rapids, Iowa.

/s/ C.C.
C.C.

REVOCATION

The parent of the above child is hereby informed that a parent who signs a Release of Custody may petition the Juvenile Court at any time prior to the hearing on termination of parental rights or at the hearing on termination of parental rights to order that this Release be revoked. The Court shall order such Release revoked if a parent petitions to have the Release revoked within ninety-six (96) hours of signing the Release. Otherwise, the Juvenile Court shall order the release revoked only upon clear and convincing evidence that good cause exists for revocation. *Good cause for revocation* includes, but is not limited to, a showing that the release was obtained by fraud, coercion or misrepresentation of law or fact which was material to its execution.

ACKNOWLEDGEMENT

I, the undersigned, C.C., parent of B.G.C., the minor child, do hereby acknowledge that I have been presented with the above information concerning my rights with respect to revocation of the above release; that I have read the same in its entirety and that I understand the same. That this release is executed by me as my voluntary act and deed and not the result of promises, threats, fraud, coercion or misrepresentation of law or fact.

/s/ C.C.
C.C.

WITNESS:

The undersigned hereby witness that they are persons familiar with the parent/child relationship existing between the parent and the minor child identified herein and the parent whose name appears hereon executed the same as his/her own voluntary act and deed.

/s/M.E.[registered nurse] /s/N.K.[registered nurse]

On February 11, 1991, Attorney Monroe was appointed custodian of the baby. He assumed physical custody. On the same day, Monroe filed a petition for termination of the parental rights of the mother and S.S., who at this juncture was the apparent father of the child. The termination petition was filed pursuant to Iowa Code section 600A.8(1) and (5).

On February 25, the juvenile court entered an order granting the termination petition. Also on February 25, R.D. and J.D. filed a petition for adoption of the baby. By then both parents had signed the release of custody form set out above. Each was advised of his or her rights of revocation as fully set forth in the signed release of custody forms.

There the matter rested until March 6, 1991, when the mother filed an application to either revoke her release of custody or vacate any termination order which had been entered. She asserted (1) her release of custody was invalid because it was not signed at least seventy-two hours[1] after the birth of the child, as required by Iowa

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1. We note that S.S.'s release of custody was signed in excess of seventy-two hours from the date of the birth

Code section 600A.4(2)(d), and for the first time she asserted (2) D.S., not S.S., was the father of the child, and that D.S. had not signed a release of custody. D.S. filed a request to vacate the order terminating parental rights but not until March 12, 1991.

On March 21, 1991, the juvenile court entered an order dismissing for lack of jurisdiction the mother's application to revoke her release of custody or vacate the termination order. The juvenile court stated under Iowa Code section 600A.9(2), it lost jurisdiction to vacate the termination order when the petition for adoption was filed.

The mother appeals both the February 25 order terminating her parental rights and the March 21 order dismissing her application to revoke her release or vacate the termination order. The two appeals have been ordered consolidated. Neither S.S. nor D.S. appeal.

The natural mother, C.C., challenges the validity of her signed release of custody. In this respect it is beyond dispute the release she signed was done less than the seventy-two hours required under section 600A.4(d). If the controversy ended here, the matter could easily be resolved, for the cited section makes it clear that a release of custody "Shall be signed not less than seventy-two hours, after the birth of the child to be released, by all living parents." Here the release she

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of the child. S.S. does not challenge the termination order.

executed was signed but forty hours after the birth of the child.

However, after the release of custody was signed, the designated custodian of the child petitioned the juvenile court to terminate the parental rights of the mother and the man she claimed to be the natural father of her child. The matter was fixed for hearing for February 25, 1991, at 8:30 a.m. A petition for adoption was also filed February 25, 1991. Section 600A.9(2) provides the juvenile court does not retain jurisdiction once an adoption petition is filed.

Both the mother and S.S. acknowledged receipt of a copy of the notice and consented to the jurisdiction of the court. Each signed an acceptance of service and waiver of notice, and in the body of that instrument requested the court to promptly hear and decide whether to terminate their parental rights to the child.

Even though the mother and S.S. had notice of the time and place of hearing on the petition to terminate their rights, neither party appeared, nor did anyone appear for them. Their refusal to appear is consistent with the statement in their acceptance of service and their release of custody. Each parent was afforded the opportunity to object to the release at that time but declined to do so.

The facts and the applicable law require us to affirm in part, reverse in part, and remand. In doing so and for reasons hereafter set forth, we:

1. Determine the juvenile court yet had jurisdiction to rule on the mother's posttrial motions. Accordingly, we remand with directions to treat those requests as motions for new trial under rule 244 and/or motions to enlarge under rule 179(b). The juvenile court is to enter such rulings as it deems appropriate so long as those rulings are consistent with the law applicable to this factual setting and the rules of civil procedure.

2. We do not determine the merits of the court's ruling as to D.S., for he did not appeal.

3. The statute in question is constitutional.

4. Even if section 600A.4(3) is employed by the party assuming custody, the seventy-two hour requirement after birth must be met. Only the signature of the living parent having custody is necessary under that section. That requirement was not met in this case.

5. We do not rule whether the mother waived that defect by her failure to object at the termination.

6. The juvenile court on remand is free to act under the aforesaid motions in a manner consistent with this opinion.

I. Legal Framework on Appeal.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). The legislature has decreed the welfare of the

child is the paramount consideration in these proceedings. Iowa Code § 600A.1. The interests of natural parents are to be given due consideration. Id. All the rest of chapter 600A is subject to these rules.

This case involves statutory construction. We may consider the language used in the statute, the objects sought to be accomplished, the evils and mischief sought to be remedied. Metier v. Cooper Transport Co., Inc., 378 N.W.2d 907, 912 (Iowa 1985). We place a reasonable construction on the statute which will best effectuate its purpose rather than defeat it. Id. We must examine both the language used and the purpose for which the legislation was enacted. Id. We consider all parts together without giving undue importance to one single or isolated portion. Id.

> Ordinarily, the usual and ordinary meaning is to be given the language used, but the manifest intent of the legislature will prevail over the literal import of the words used.... Where language is clear and plain, there is no room for construction.

Iowa National Industrial Loan Co. v. Iowa Dept. of Revenue, 224 N.W.2d 437, 440 (Iowa 1974) (citations omitted). The supreme court quoted with approval from 1A Sutherland Statutory Construction (Sands 4th Ed. 1972), § 25.04, page 301:

> "Certain forms and types of statutes are generally considered mandatory. Unless the context otherwise indicates, the use of the word "shall" (except in its future tense) indicates a mandatory intent. And even the permissive word "may" as interpreted is mandatory when the duty is imposed upon a public official and his act is for the benefit of a private individual."

This same authority also says this:

> "It can be stated as a general proposition that, as regards the question of mandatory or directory operation, the courts will apply that construction which best carries into effect the purpose of the statute under consideration.
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> "* * *
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> "The ordinary meaning of language may be overruled to effectuate the purpose of the statute. And it is always presumed that the legislature was motivated by some purpose in the enactment of a statute, so that if one construction would render it ineffective, the other should manifestly be adopted." 2A Sutherland Statutory Construction, § 57.04, pages 417, 418.

Id. at 441.

We deal first with the question of the juvenile court's jurisdiction. Our finding on this issue necessitates a remand. Therefore, our findings on the other issues are designed to narrow the problems on remand and provide guidance for the juvenile court.

II. Jurisdiction of the Juvenile Court.

The mother filed with the juvenile court a posttrial document captioned as a "Request to Revoke Release of Custody or Vacate Orders." In her request, the mother essentially asks (1) that the order terminating her parental rights be vacated and (2) that the court enter an order revoking her signed release of custody. Her request was filed on the ninth day after the entry of the order terminating her parental rights. As explained later, we will refer to her request as a posttrial motion. It is

noted that the petition to adopt was filed on the same day the order to terminate was entered.

The juvenile court denied her posttrial motion on the ground that it no longer had jurisdiction. In doing so, the court relied on Iowa Code section 600A.9(2) which states:

> If an order is issued under subsection 1, paragraph "b" of this section, the juvenile court shall retain jurisdiction to change a guardian or custodian and to allow a terminated parent to request vacation of the termination order if the child is not on placement for adoption or a petition for adoption of the child is not on file. The juvenile court shall grant the vacation request only if it is in the best interest of the child. (Emphasis added.)

The adoptive parents contend, and the juvenile court held, the filing of the adoption petition immediately divested the juvenile court of jurisdiction. Their reasoning appears to be consistent with section 600A.9(2).

On appeal our attention is directed to In re Adoption of M.M.B., 376 N.W.2d 900, 902 (Iowa 1985). In that case, (Chief) Justice McGivern writing, the supreme court stated:

> Under Iowa code section 600A.9(2), however, a person whose parental rights have been terminated may seek to have the court vacate the termination order. Such a request may be granted only if the vacation is shown to be in the best interest of the child. The request may be made under this subsection of the statute only if the child is not on placement for adoption or a petition for adoption of the child is not on file.
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> Consequently, once the petition for adoption of M.M.B was filed ... [the father's] right to seek vacation of the order terminating his parent-child rights was extinguished under the terms of section 600A.9(2).
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> [The father] did not timely request vacation of the order terminating his parental rights nor did he claim fraud in the execution of the

> termination agreement and the entering of the order terminating his parental rights. Therefore, the termination order became final when the adoption petition was filed because [the father] could no longer seek to have the order vacated. Iowa Code § 600A.9(2).

Consistent with the case of In re Adoption of M.M.B., had the mother not filed her posttrial motion within ten days (she filed on the ninth day) after the entry of the termination order, we would agree with the juvenile court that it no longer had jurisdiction. However, the procedural setting in In re Adoption of M.M.B. is different than that in this case. In M.M.B., there was not a posttrial motion filed within the ten-day limitation period provided for under Iowa Rule of Civil Procedure 247.

Under that rule, if certain posttrial motions are to be filed, they must be filed within ten days after the decision is filed. If posttrial motions are filed within the ten-day limitation, the trial court retains jurisdiction to effect the position of the parties. See, e.g., Selby v. McDonald, 219 Iowa 823, 830, 259 N.W. 485, 489 (1935). The decision of the trial court does not become final unless and until a decision "puts beyond the power of the court which made it to place the parties in their original position." Helland v. Yellow Freight System, Inc., 204 N.W.2d 601, 604 (Iowa 1973) (defining the final judgment rule).

We do not believe the filing of the adoptive petition overrides the dictates of Iowa Rule of Civil Procedure 247

and pertinent case law. Limits imposed on the juvenile court's jurisdiction by section 600A.9(2) supplement, rather than displace, the well-established final judgment rule and the rules of civil procedure. Section 600A.7(1) provides:

> The hearing on termination of parental rights shall be conducted in accordance with the provisions of sections 232.91 to 232.96 and otherwise in accordance with the rules of civil procedure. Such hearing shall be held no earlier than one week after the child is born. (Emphasis added.)

We hold the juvenile court retains jurisdiction over the termination proceedings as in regular proceedings if an adoption petition is filed before the expiration of the Iowa Rule of Civil Procedure 247 time limits. The adoptive party may not remove the statutorily-created jurisdiction of the trial court for the consideration of posttrial motions simply by filing an adoption petition. Once the rule 247 time limit expires, the filing of the adoption petition will effectively remove jurisdiction from the juvenile court as our supreme court held in In re Adoption of M.M.B.

In our case, C.C. did timely file her posttrial motion. Although not denominated as such, when we consider the entire contents of her request, we have no problem construing her request as a motion to expand or enlarge under Iowa Rule of Civil Procedure 179(b) and/or a motion for new trial under Iowa Rule of Civil Procedure 244. Our rules of civil procedure are to be "construed and enforced

to secure a just, speedy and inexpensive determination of all controversies on the merits." Iowa R. Civ. P. 67.

> Adoption is a creature of statute, being unknown in common law.... Although such statutes have been subject to strict construction in some jurisdictions this court has not adhered to that concept for at least the past 70 years.... Moreover, this standard is clearly in keeping with Code § 4.2, which states:
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> > "The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice."

Stotler v. Lutheran Social Service of Iowa, 209 N.W.2d 121, 124 (Iowa 1973).

We conclude the court did have jurisdiction to rule on the mother's posttrial motions. Accordingly, we remand for that purpose. We do not pretend by this ruling to imply what the trial court's ruling on remand should be.

III. Second Alleged Father.

The mother originally told the attorney handling the adoption that S.S. was the father of her child. S.S. accepted that responsibility and signed a release of his parental rights. Those rights were terminated in the same order as the mother's. The mother now claims that D.S. is the father of her child. D.S. seemingly acknowledges that he is. We make no decision as to his claims for he has not appealed nor have his purported parental rights been terminated.

IV. Constitutional Claims.

The natural mother also complains the provisions of Iowa Code chapter 600A are unconstitutional. She contends its provisions violate due process both as written and as applied to her. She asserts the alleged violation occurs because independent counsel is not required for the signing of a release; further, she argues the natural parent must be advised to obtain independent counsel.

"The basic or fundamental elements of due process of law are notice and opportunity to be heard." Carr v. Iowa Employment Security Commission, 256 N.W.2d 211, 214 (Iowa 1977). The mother does not dispute the fact she received and signed an acceptance of notice of the termination hearing. Nor does she claim she did not understand what the hearing was about.

The United States Supreme Court has ruled there is no constitutional due process right to counsel in termination cases. Lassiter v. Dept. of Social Services, 452 U.S. 18, 33, 101 S. Ct. 2153, 2163, 68 L. Ed. 2d 640, 653 (1981). The Court's holding in Lassiter provides guidance for us here. If no counsel is constitutionally mandated for termination hearings, neither is counsel constitutionally required for the more preliminary proceedings involved.

Our review of chapter 600A convinces us the legislature has built in sufficient due process safeguards. There are a number of provisions dealing with revocation of release

of parental rights. Proper notice and hearing are provided for.

Section 600A.7 mandates the termination hearing comply with section 232.91 to 232.96 and otherwise in accordance with the Iowa Rules of Civil Procedure. These rules provide constitutionally sufficient mechanisms for challenging the validity of any release of parental rights.

Our supreme court has held the judicial branch of the government has no power to determine whether legislative acts are wise or unwise, nor has it the power to declare an act void unless it is plainly and without doubt repugnant to some provision of the Constitution. See Catholic Char. of Arch. of Dubuque v. Zalesky, 232 N.W.2d 539, 543 (Iowa 1975), citing Graham v. Worthington, 259 Iowa 845, 850-51, 146 N.W.2d 626, 631 (Iowa 1966).

> "Ordinarily, statutes, with notable exceptions . . . regularly enacted by the legislature will be accorded a strong presumption of constitutionality and all reasonable intendments must be indulged in favor of the validity of the legislation attacked. One who challenges legislation on constitutional grounds has the burden to negate every reasonable basis upon which the statute may be sustained. Where the constitutionality of a statute is merely doubtful or fairly debatable, the Courts will not interfere. Thus, a statute will not be declared unconstitutional unless it clearly, palpably and without doubt, infringes the Constitution."

Catholic Char. of Arch. of Dubuque, 232 N.W.2d at 543, (quoting Keasling v. Thompson, 217 N.W.2d 687, 689-90 (Iowa 1974)).

We determine C.C.'s constitutional challenges concerning right to counsel at the preliminary stages of termination proceedings are without merit.

V. Validity of Release of Custody.

We turn next to the natural mother's challenge to the validity of her release of parental rights. To meet this challenge, we resort to the rules of statutory construction outlined previously. With these rules in mind, we set out the relevant portion of the statute:

> 2. A release of custody:
> a. Shall be accepted only by an agency or a person making an independent placement.
> b. Shall not be accepted by a person who in any way intends to adopt the child who is the subject of the release.
> c. Shall be in writing.
> d. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents.
> e. Shall be witnessed by two persons familiar with the parent-child relationship.
> f. Shall name the person who is accepting the release.
> g. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.
> h. Shall state the purpose of the release, shall indicate that if it is not revoked it may be grounds for termination, and shall fully inform the signing parent of the manner in which a revocation of the release may be sought.

Iowa Code § 600A.4(2) (emphasis added).

By its language, subsections (a) through (h) must be fulfilled for the release of parental rights to be valid. See In re C.K., 315 N.W.2d 73, 40 (Iowa 1982). The use of the word "shall" indicates a mandatory intent of the

legislature. See Iowa National Industrial Loan Co., 224 N.W.2d at 441.

Part of the controversy in this case centers on subsection (d) of section 600A.4(2). That section provides seventy-two hours must elapse after the birth of the child before a release may be signed. The mother argues that since the release here was signed about forty hours after the birth, it was invalid.

In reply, the adoptive parents argue that since the mother initiated the adoption process, she knowingly and intelligently waived the seventy-two hour wait requirement, both by her desire to sign the release, and by her failure to revoke it. Further, the adoptive parents argue the release outlined by section 600A.4(2) is not required if the requirements of section 600A.4(3) are met. Alternatively, they argue the record is undisputed the mother had adequate notice of the termination hearing and did not appear or object at that hearing.

Turning first to the argument that the seventy-two hour and the signature by all living parents requirements of section 600A.4(2) do not apply if the procedure of section 600A.4(3) is met, we set forth section 600A.4(3):

> 3. Notwithstanding the provisions of subsection 2, an agency or a person making an independent placement may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the agency or a person making an independent placement immediately petitions the juvenile court designated in section 600A.5 to be appointed custodian and otherwise petitions, either in the same petition or within a reasonable time in a

> separate petition, for termination of parental rights under section 600A.5. Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian. (Emphasis added.)

We note at the inception that under section 600A.4(2)(d), a release of custody must be signed by all living parents. In this respect, we agree if section 600A.4(3) applies and the requirements therein are met,[2] custody of a minor child may be assumed upon the signature of the one living parent who has possession of the minor child. The statute is clear in this respect.

We disagree, however, that by utilizing section 600A.4(3), that somehow obviates the section 600A.4(2) seventy-two hour requirement. We hold the seventy-two hour requirement applies whether custody is assumed under section 600A.4(2) or 600A.4(3). We further hold that except for the one living parent in possession of the minor child provision of section 600A.4(3), the other requirements of section 600A.4(2) apply when proceedings are brought pursuant to section 600A.4(3). Further, either the signing or the nonsigning parent may request the juvenile court to revoke the release up to the time a termination order is entered. Iowa Code § 600A.4(4).

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2. The agency or person making an independent placement must then immediately petition the court to be appointed guardian and, very soon thereafter, file a petition for termination of parental rights. Iowa Code § 600A.4(3).

To buttress our holding, we turn to the legislative history to determine the intent of the legislature. We are aided in our inquiry by a detailed explanation of the statute at the time it was enacted.

> Subsection 3 of this section [§ 600A.4(3)] creates a mechanism whereby a release of parental rights, coupled with a court order, may be effective to transfer custody of the minor child upon the signature of only one of the living parents. The nonsigning parent is given standing to challenge such a release at the subsequent termination hearing.

Detailed Explanation of Adoption Laws Study Committee Bill, § 4 at 3, H.F. 614, 66 G.A., ch. 1229 § 4 (1976) (emphasis added).

This explanation comports with our own reading of the provisions in question. The committee explanation indicates a parental release is still required for voluntary termination under this chapter. Subsection 2(d) contains the requirements that all living parents sign the release. Under section 600A.4(3), the signature of only one parent is necessary for assumption of custody. That parent, of course, must be the one in possession of the child.

Subsection 3 was written for those situations, such as the one before the court, where a "single parent" is giving birth and/or raising the child. The noncustodial parent need not sign the release for it to be effective. Rather, the nonsigning parent must object at or prior to the entry of the termination order to revoke the release. Iowa Code § 600A.4(3) & (4).

A logical and harmonious construction of the statute likewise indicates the other steps outlined in subsection 2 are still required in the case of a single parent. The particular provisions of section 600A.4 were written to attempt to alleviate problems of overreaching, fraud, or coercion, such as those outlined by the Iowa Supreme Court in Stotler, 209 N.W.2d at 127. See Explanation of Adoption Laws, § 4 at 3, H.F. 614, G.A. 66. Further, the supreme court stated in Stotler:

> Failure to comply with statutorily prescribed procedures is fatal to the power of a court to decree an adoption.

Id., 209 N.W.2d at 124.

Under subsection 2 the release of custody may only be accepted by "an agency or a person making an independent placement." These same parties are likewise the only ones under subsection 3 who may assume custody. The position taken by the adoptive parents, that subsection 3 essentially replaces subsection 2, eviscerates the release safeguard requirements if the releasing parent is a so-called single parent.

The safeguard requirements of two witnesses familiar with the parent-child relationship, the boilerplate information on revocation and purpose of the release, and the other requirements of subsection 2 would likewise be gone. This reasoning is contrary to legislative intent and public policy. See Explanation of Adoption Laws, H.F. 614, G.A. 66.

Chapter 600A was written in response to the United States Supreme Court's opinion in Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), as well as the Iowa Supreme Court's opinion in Stotler, 209 N.W.2d 121 (Iowa 1973). Id. The statute is meant to protect the rights of parents to their children. The statute provides the parents with due process, while guarding against premature, hasty, coercive, or unreflected decisions to release parental rights.

Under the adoptive parents' interpretation, single parents would be deprived of the safeguards afforded to parents living together. Needless to say, this would be patently unfair. Likewise, if this were truly the policy adopted by the Iowa legislature, it would raise serious equal protection and due process problems such as those addressed by the United States Supreme Court in Stanley v. Illinois.

We determine a release as described by section 600A.4(2) is required, subject to the provisions of section 600A.4(3) allowing for a release signed only by a single living parent in possession of the child.

VI. Waiver.

The adoptive parents argue even if the parental release provisions of subsection 2 are applicable, the mother made a knowing and intelligent waiver of them when she signed

only forty hours after childbirth. However, at no time was the mother advised of the seventy-two hour waiting period.

The adoptive parents also argue the mother is now precluded from raising those issues. Their claim is premised on the fact the mother failed to object at the termination hearing, even though she was afforded an opportunity to do so. They argue that even constitutional rights may be waived if not raised in the trial court. See cf. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974)

The mother does not dispute she was provided with notice and an opportunity to be heard at the termination hearing. See Carr v. Iowa Employment Security Comm., 256 N.W.2d 211, 214 (Iowa 1977). It is equally clear she was advised of her rights of revocation. She not only declined to revoke her consent, but declined to challenge or recant at the termination proceedings.

This matter is to be remanded. We have held in a previous division that the juvenile court still has jurisdiction to rule on the mother's posttrial motions. As some of the issues raised here may be affected by the juvenile court's ruling on those posttrial motions, we decline to rule on any other issues not specifically addressed in this opinion.

VII. Conclusion.

We summarize our holdings for the clarity and convenience of the juvenile court and the parties are remand.

We determine the juvenile court's jurisdiction is not removed pursuant to section 600A.9(2) until after disposition of posttrial motions filed pursuant to Iowa R. Civ. P. 243, 244, or 179(b), or the expiration of the time limits set out in rule 247. At that time, if a petition for adoption is on file or filed, the juvenile court's jurisdiction is removed. Accordingly, we determine the juvenile court erred by ruling it had no jurisdiction to hear C.C.'s posttrial motions filed within the rule 247 time limits. We remand for a consideration of these motions. On remand, the trial court shall act on C.C.'s posttrial motions consistent with Iowa's Rules of Civil Procedure and pertinent law.

We determine the seventy-two (72) hour waiting period set out in Iowa Code section 600A.4(2)(d) before signing a release of parental rights is mandatory. However, we do not rule whether the mother waived that defect by failure to object at the termination hearing. The trial court is free to consider this issue on remand.

We determine C.C.'s due process constitutional claims regarding the lack of a requirement for independent counsel are without merit. We make no decision on D.S.'s claims,

as he has not appealed nor have his parental rights been terminated.

We reverse and remand this case to the juvenile court for proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Costs of this appeal are taxed one-half to C.C. and one-half to the adoptive parents.

REVERSED IN PART AND REMANDED.

Donielson, P.J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I agree with the majority that section 600A is constitutional. I also agree with the majority the 72-hour period was not waived by the mother, and that it is mandatory and cannot be waived. However, the 72-hour question was material to the issue before the court at the termination hearing. The mother had notice of the termination hearing. She did not appear or object. The decision to terminate has therefore resolved the issue of the validity of the consent.

I agree with the trial court that when the adoption petition was filed, it no longer had jurisdiction. That is what the legislature clearly provided in the statute. Unlike the majority, I find no direction in In re M.M.B., 376 N.W.2d 900 (Iowa 1985), to allow a trial court to consider an Iowa R. Civ. P. 247 motion in a termination after an adoption petition is filed.