

IN THE COURT OF APPEALS OF IOWA

No. 4-485 / 94-559

FILED

DEC 14 1994

CLERK SUPREME COURT

IN THE INTEREST OF M.G. and H.G., Minor Children,
D.G., Mother,
Appellant.

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Appeal from the Iowa District Court for Muscatine
County, James A. Weaver, District Associate Judge.

Mother appeals the district court's order terminating
her parental rights. **APPEAL DISMISSED AND CASE REMANDED.**

Roland M. Caldwell of Muscatine Legal Services,
Muscatine, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen,
Deputy Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Christine Dalton, Assistant County
Attorney, for appellee-State.

Considered by Donielson, C.J., and Hayden and Cady, JJ.

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DONIELSON, C.J.

This case involves a mother's appeal from the juvenile court's termination of her parental rights. We find we do not have jurisdiction over this appeal as the juvenile court lacked jurisdiction to terminate the mother's parental rights while an appeal was pending from a permanency order which involved the issue of termination. We remand this case for further proceedings before the juvenile court.

I. Procedural Status of Case

In May 1993 the State filed a motion for a permanency hearing in which it recommended the children be placed with their maternal grandmother. Permanency hearings were held in August and September 1993. In its September 14, 1993, permanency order the juvenile court: 1) refused to return the children to their mother; 2) refused to transfer the children to their grandmother's care; and 3) ordered the State to file a petition for termination of the mother's parental rights within forty-five days.

The mother appealed the permanency order, and on May 26, 1994, this court ruled on the appeal and found: 1) the children could not be returned to the mother's custody; 2) guardianship and custody of the children should be transferred to the grandmother; and 3) termination of the mother's parental rights would not be in the children's best interests and the juvenile court order requiring the

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State to file a petition to terminate should be reversed. See In re M.G., No.4-178/93-1441 (Iowa App. May 26, 1994).

The supreme court granted the guardian ad litem's application for further review. On November 23, 1994, it filed an opinion vacating our earlier decision and affirming the juvenile court. See In re M.G., No. 93-1441 (Iowa November 23, 1994). The supreme court specifically held directing DHS to commence an action to terminate parental rights was in the children's best interests, and it agreed with the juvenile court's order to do so. Id. at 3-4.

During the pendency of the appeal of the permanency order, the State proceeded on November 16, 1993, to file a petition to terminate parental rights, and the juvenile court entered an order terminating the mother's parental rights on March 10, 1994. The mother appealed the termination order and that appeal constitutes the case presently before this court.

II. Jurisdiction

A court has a duty on its own motion to refuse to decide controversies not properly before it, and it has the inherent power to determine whether it has jurisdiction of a controversy. Campbell v. Iowa Beer & Liquor Control Dept., 366 N.W.2d 574, 576 (Iowa 1985). An appellate court has no jurisdiction of subject matter over which the trial court lacked jurisdiction. In re Adoption of Gardiner, 287

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 N.W.2d 555, 559 (Iowa 1980). The want of subject matter jurisdiction may be raised for the first time on appeal. Hutcheson v. Iowa Dist. Court for Lee County, 480 N.W.2d 260, 262 (Iowa 1992).

The general rule is a trial court loses jurisdiction over the merits of a controversy when an appeal is perfected. In re B.L., 470 N.W.2d 343, 347 (Iowa 1991). "An exception to this rule is that a trial court can retain jurisdiction to proceed on collateral issues not affecting the subject matter of the appeal". Id. A statutory exception exists which ensures a juvenile court retains jurisdiction during the pendency of an appeal. Iowa Code § 232.133(3). However, the extent of that jurisdiction is limited to matters not directly involved in the appeal. See B.L. 470 N.W.2d at 348 (juvenile court was without authority to dismiss CINA proceedings where matter addressed in dismissal was issue directly involved in pending appeal).

Upon a careful review of the record and the prior appellate court rulings, we can come to no other conclusion but that the juvenile court was without jurisdiction to proceed to terminate the mother's parental rights during the pendency of the appeal from the permanency order. Specifically at issue in that appeal was whether the State should have been ordered to file a petition for termination of the mother's parental rights. The juvenile court's subsequent termination order cannot be characterized as a

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collateral issue not directly involved in the appeal. In proceeding to terminate the mother's parental rights, the juvenile court effectively nullified the effects of appellate review of the mother's appeal from the permanency order.

An action is void where it was taken by a court without jurisdiction of the subject matter. Hutcheson, 480 N.W.2d at 262. The juvenile court was without jurisdiction to terminate the mother's parental rights and its termination order is void. We dismiss the appeal and remand this case for further proceedings consistent with the opinion of the supreme court filed on November 23, 1994.

APPEAL DISMISSED AND CASE REMANDED.