IN THE COURT OF APPEALS OF IOWA

FILED
JAN 26 1989
CLERK SUPREME COURT

IN THE INTEREST OF K.A.M.)
and **A.J.M.**, Children,
)
D.A.M., Father,
Appellant.)

8-591
88-1004

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Appeal from the Iowa District Court for Boone County (No. Juv. 752), William C. Ostlund, Juvenile Referee.

Father appeals order terminating his parental rights. **AFFIRMED BY OPERATION OF LAW.**

John D. Jordan, of Jordan, Mahoney & Jordan, Boone, for the appellant father.

William R. Tysseling, of Tysseling, White & Zaffarano, Ames, for the appellee mother.

Bruce L. Anderson, of Doran, Courter, Quinn & Doran, Boone, guardian ad litem for the appellee children.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ., but considered en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

Oxberger, C.J., and Donielson and Hayden, JJ., would affirm because they find clear and convincing evidence the father abandoned the children.

Schlegel, P.J., and Sackett and Habhab, JJ., would reverse because the termination of the father's rights carries with it a termination of his duty to support. He has means to support. The children are in need of support. The mother is receiving AFDC and a public interest is involved.

AFFIRMED BY OPERATION OF LAW.