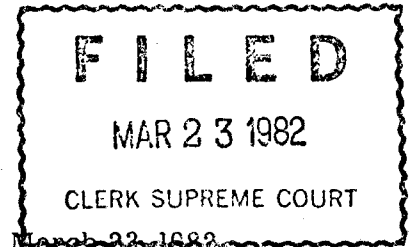


IN THE COURT OF APPEALS OF IOWA



IN THE INTEREST OF T.J.M.,)
D.O.B. 10/3/76;)
L.D.M.)
D.O.B. 9/21/77; and)
P.G.M.)
D.O.B. 2/1/79)
J.M.M. AND G.M.M.,)
Natural parents,)
Appellants.)

Filed March 23, 1982

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3-67187

Appeal from Winnebago District Court, Ralph McCartney, Judge.

Natural parents appeal the trial court order terminating their parental rights to their three children, contending: (a) termination of parental rights was too severe under the facts presented; (b) the termination subjected the father to cruel and inhuman punishment for criminal charges pending against him and (c) the trial court erred in appointing only one attorney, at public expense, to represent both of them. AFFIRMED.

David L. Leitner of Cooper, Sinnary & Cooper, Forest City, for the appellants.

Thomas J. Miller, Attorney General, Brent D. Hege, Assistant Attorney General, for the State.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Natural parents appeal the trial court order terminating their parental rights to their three children, contending: (a) termination of parental rights was too severe under the facts presented; (b) the termination subjected the father to cruel and inhuman punishment because of the criminal charges pending against him and (c) the trial court erred in appointing only one attorney, at public expense, to represent both parents. We affirm the trial court's termination of the M.'s parental rights with respect to their three children.

J.M.M. and G.M.M. are the natural parents of T.J.M., L.D.M., and P.G.M. On December 26, 1979, finding that J.M.M. and G.M.M. had "failed to exercise a minimal degree of care in supplying the [children] with adequate food, clothing or shelter and refuse[d] other [means] made available to provide such essentials," see section 232.2(5)(g), The Code 1979, the M. children were formally declared "in need of assistance" in accordance with chapter 232. On May 26, 1981, a petition was filed to terminate the parental rights of J.M.M. and G.M.M. An order was filed on July 10, 1981, terminating J.M.M.'s and G.M.M.'s parental rights.

J.M.M. is currently a resident of the Hancock County Jail. He returned to the State in June of 1981 after fleeing in apprehension of arrest in the early part of April 1980. J.M.M. was aware charges were pending against him and that he would be arrested upon reentering the state. J.M.M. returned to "straighten [his] charges out, besides straighten [his] life out," and "to try to get [his] kids back."

G.M.M. was involuntarily committed to the Cherokee Mental Health Institute in 1980. She is currently a resident of the Story County Care Facility. Sherry Cook, a social worker at the Story County Institute, testified at the termination hearing G.M.M. is presently incapable of caring for herself outside of

the facility and optimistically estimated she would have to stay there for at least one or two more years.

The State claims the appellants preserved only one issue for consideration on appeal. The State contends appellants' constitutional issues on cruel and unusual punishment, denial of due process for failure to appoint separate counsel for J.M.M. and G.M.M. and that the trial court had an obligation to seek the least restrictive alternative in disposing of the termination petition were not raised at the trial court level and are, therefore, waived on appeal. We agree.

Although our review is de novo, we adjudicate only those propositions preserved and presented to us. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Even issues of constitutional dimension may not be raised for the first time on appeal. In the Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978). We find the appellants were represented by counsel throughout the proceedings, had the opportunity to respond to the State's petition and to present evidence and were afforded the opportunity to utilize compulsory process. We conclude the appellants waived their right to appeal the foregoing issues.

We find also that appellants conceded there was sufficient evidence, under section 232.116(5), The Code 1981, to terminate their parental rights. The record supports that conclusion. Under section 232.116(5), The Code 1981, grounds for termination are established if the court finds (a) the children have been adjudicated as being in need of assistance, (b) custody of the children has been transferred from the parents for at least twelve months and (c) clear and convincing evidence that the children cannot be returned to the custody of their parents.

In this case, the M. children were adjudicated as being in need of assistance in December of 1979. Custody of the children was transferred to the Winnebago

County Department of Social Services for foster home placement at that time. The children have been removed from their parents' custody for over twelve months. Given both J.M.M.'s and G.M.M.'s current status, the evidence is clear and convincing the custody of the children cannot be returned to the natural parents. Consequently, the record supports the appellants' concession that the grounds for termination had been established.

The remaining question is whether the court should have refrained from terminating J.M.M.'s and G.M.M.'s parental rights pursuant to section 232.116(6), The Code 1981. Section 232.116(6), makes termination of parental rights discretionary with the trial court in certain circumstances. Section 232.116(6)(e) allows the court to not terminate parental rights, if otherwise justified, if the parent's absence is due to his or her admission or commitment to an institution, hospital or health facility. J.M.M. argues the court should have considered the temporary commitment status of both G.M.M. and him, and should not have terminated their parental rights. J.M.M. argues for temporarily placing the children with R.S., G.M.M.'s sister until either J.M.M. or G.M.M. becomes capable of providing the children proper care.

We are of the opinion the trial court properly exercised its discretion in opting for termination of the M.'s parental rights. The record depicts a tragic state of affairs facing the M. children. Without detailing the evidence, the court found, and we agree, the children's "physical, emotional and mental health has improved measurably since they have left their parents' care" and "a return to any parental home that could be established by her [T.M.] mother and father would, in view of the evidence, be highly deleterious." The court noted grave concern about an "immediate and almost certain danger of regression if the children were returned to any home that their parents might establish in the future." There was

a recommendation by the children's guardian ad litem that the children's best interest dictated severance of parental rights. The social worker assigned to the children indicated substantial improvement in the children's physical mental and emotional status since their placement in foster homes and recommended continuation of the program and termination of the parents' rights. The Department of Social Services recommended severance of the children's ties with the locality and with the children's maternal aunt, R.S. We conclude the court properly exercised its discretion in terminating the parental rights of J.M.M. and G.M.M. Compare In the Interest of Adkins, 298 N.W.2d 273 (Iowa 1980). We do not believe the best interests of the children would be served by temporarily placing custody of the children with R.S. in lieu of termination . We also note R.S. is not a party to this proceeding. The trial court's order is affirmed.

AFFIRMED.