

**IN THE COURT OF APPEALS OF IOWA**

No. 0-038 / 09-1144  
Filed February 24, 2010

**IN THE INTEREST OF T.D.,  
Minor Child,**

**G.W. and S.W., Petitioners,  
Appellees,**

**V.D. and J.D., Intervenors,  
Appellants.**

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Appeal from the Iowa District Court for Warren County, Kevin A. Parker,  
District Associate Judge.

The grandparents of T.D. appeal the district court's order denying their  
motion to intervene in the adoption of T.D. **ADOPTION AFFIRMED;  
REMANDED FOR HEARING ON VISITATION.**

Diana L. Rolands of Booth Law Firm, Osceola, for appellant.

Gregory Wright, Indianola, pro se appellee.

Lu Ann Barnes, Ankeny, for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VOGEL, P.J.**

The grandparents of T.D. appeal the district court's denial of their motion to intervene in the adoption of T.D. and denial of their request to incorporate a prior visitation agreement. We conclude that the district court should have granted the grandparents' motion to intervene and therefore, we reverse in part and remand.

**I. Background Facts & Proceedings.**

T.D. was born in Nevada in 2004, but was removed from his parents' home in 2006 due to their inability to care adequately for and protect him. The Nevada Department of Family Services (DFS) initially placed T.D. in a foster home, but shortly thereafter placed him with his maternal grandmother and step-grandfather in South Carolina, where he remained for five months. In September or October 2006, T.D. was removed from his grandparents' care and placed with his paternal aunt and uncle ("adoptive parents") in Indianola, Iowa. T.D.'s aunt and uncle wanted to adopt T.D. and at some point, T.D.'s biological parents also expressed a desire for this to occur.<sup>1</sup>

The Nevada district court retained jurisdiction over T.D. On October 5, 2006, the grandparents and adoptive parents, through their respective attorneys, entered into a visitation agreement approved by the Nevada district court on October 11, 2006 to "be incorporated into the adoption decree".<sup>2</sup> Subsequently, T.D.'s biological parents entered into an adoption agreement with the adoptive

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<sup>1</sup> The grandparents and adoptive parents struggled to maintain a civil relationship with each other, which is readily apparent from the Nevada court filings, hearings, and orders as relevant to T.D.'s placement, care, and visitation.

<sup>2</sup> The order stated that the grandparents "are entitled to visitation rights" and "are entitled to four weeks of visitation with [T.D.] each year . . . with a single week of visitation to occur during each quarter."

parents dated February 24, 2008, and relinquished their parental rights on March 5 and 6, 2008, which was confirmed in a Nevada district court order dated March 6, 2008.

Following a permanency review hearing, in an order dated June 23, 2008, the Nevada district court made the following findings:

Nevada must approve any adoption in the State of Iowa relative to the minor child. Said adoption agreement must include the established visitation for the [grandparents].

. . . .  
The court further finds that the [grandparents] have the right to intervene in or object to the adoption proceedings in Iowa.

The Court further finds that the [grandparents] shall have a clear reservation of rights to request specific visitation with the minor child in any adoption proceedings in Iowa.

The Court further finds that the [adoptive parents] must provide specific notice to the [grandparents] of any adoption proceedings commenced in Iowa.

The Court further finds that DFS will notify the State of Iowa that they have this Order and that they believe the minor child should have visitation with the [grandparents], however the [adoptive parents] may oppose the request for visitation.

Notwithstanding these fact findings, the Nevada ruling concluded with this Order:

IT IS HEREBY ORDERED that the minor child remain in the care and custody of the [adoptive parents]. . . . [T]hat the [grandparents] have a clear reservation of rights to request defined visitation with the minor child in any adoption proceedings in Iowa. . . . [T]hat DFS notify the State of Iowa that they have this Order and that they believe the minor child should have visitation with the [grandparents]. However, the [adoptive parents] may oppose the request for visitation. . . . [T]hat the [adoptive parents] must provide specific notice to the [grandparents] of any adoption proceedings commenced in Iowa.

On May 15, 2009, the adoptive parents filed a petition for adoption in Warren County, Iowa, attaching the relevant Nevada court orders. The petition acknowledged (1) the Nevada district court granted the grandparents specific rights of visitation to include four weeks of visitation each calendar year; (2) the

Nevada district court provided the grandparents were to receive notice of the adoption hearing, and were to be allowed to intervene and request visitation; and (3) the biological parents retained very limited rights through a February 24, 2008, open adoption agreement. That same day, the district court appointed a guardian ad litem for T.D. On June 9, 2009, the grandparents filed a motion to intervene in the adoption proceedings, seeking either to have T.D. placed in their home for eventual adoption or in the alternative, “to adopt a visitation schedule similar to that set forth by the Nevada Court, but [fleshed] out with further details to avoid any further confusion about compliance required.” On June 11, 2009, a hearing was held, during which the grandparents were present with counsel and testified. Although they were given a voice in the adoption hearing, the district court took their motion to intervene under advisement.

On June 12, 2009, T.D.’s guardian ad litem filed a report with the district court. According to her report, T.D. was well bonded to his adoptive parents and there were not any health, welfare, or safety concerns for T.D. in his adoptive parents’ home. Additionally, she reported that T.D. had a “meaningful connection” with his grandparents that should be preserved if possible. Noting the disharmony between the adoptive parents and grandparents, she nonetheless supported continued reasonable visitation of T.D. with his grandparents.

On July 10, 2009, T.D.’s guardian ad litem filed a supplemental report with the district court. This report relayed information the Nevada social worker had obtained from the Nevada district court judge, who was growing impatient with the slow progress towards finalizing the adoption in Iowa. The report stated:

[The judge] was very upset to learn that the [grandparents] were attempting to gain custody of T.D. in Iowa as the Court in Nevada had previously specifically removed T.D. from their care. [The social worker] also stated that [the Judge] was adamant that the court recognize the orders from Nevada with regard to visitation and stated that if the adoption did not occur soon with these things in mind, she would order T.D. back to Nevada for further non-family placement, with no further contact with the [adoptive parents] or the [grandparents], notwithstanding that such a further move would not necessarily be in T.D.'s best interests. . . . The Nevada DCFS clearly continues to support the adoption by the [adoptive parents].

On July 17, 2009, the Iowa district court issued its ruling. The court granted the adoptive parents' petition for the adoption of T.D. Additionally, the court addressed and denied the grandparents' motion to intervene. The district court cited to *Thompson v. Thompson*, 484 U.S. 174, 108 S. Ct. 513, 98 L. Ed. 2d 512 (1988), and reasoned that because the Nevada court order was subject to modification as required by the best interests of the child, it was not a final court order requiring recognition of Full Faith and Credit.<sup>3</sup> U.S. Const. Art. IV, § I. Next it recited that under Iowa law, grandparents' visitation rights are a creature of statute. Iowa Code chapter 600C (2009) provides for grandparent visitation, which is automatically terminated by an adoption decree. Further, the court stated:

No petition was filed pursuant to 600C (Grandparent Visitation) prior to the adoption petition in this matter. The Court does not order visitation in this matter, since visitation with grandparents is not contemplated in Chapter 600 of the Iowa Code or the ICPC after adoption has been ordered.

Therefore, the district court denied the grandparents' motion to intervene and request for visitation with T.D. The grandparents appeal.

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<sup>3</sup> It found the Interstate Compact on the Placement of Children (ICPC) does apply in this case, citing Nevada Revised Statutes section 127.330 and Iowa Code section 232.158.

## **II. Scope of Review.**

We review a denial of a motion to intervene for the correction of errors at law, according some deference to the district court. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997).

## **III. The Right to Intervention.**

On appeal, the grandparents assert the district court erred in denying their motion to intervene. They argue that the Nevada court orders gave them the right to intervene and under the Full Faith and Credit doctrine of Article IV, Section I, of the United States Constitution, as well as Iowa Code sections 626A.1 and 626A.2, the Nevada court orders must be given effect by the Iowa courts. They acknowledge they were given notice of the adoption proceedings, filed a motion to intervene, were present with counsel and testified at the adoption hearing, but failed to file a petition for grandparent visitation under Iowa Code chapter 600C. Nonetheless, although denied intervention, they were allowed to develop their position fully during the hearing with testimony and exhibits. The district court, in denying the grandparents' motion to intervene, did not discuss the merits of their requested visitation or whether visitation would be in T.D.'s best interests. Rather, it is apparent from the district court's ruling that it concluded it could not consider the grandparents' evidence regarding their request for visitation because they failed to file a petition seeking visitation according to the requirements of Iowa Code chapter 600C. The grandparents suggest this ignores the Full Faith and Credit doctrine, as a prior order of the Nevada court demands application of the doctrine. Specifically, because the Nevada court required the grandparents be notified of any Iowa adoption

proceedings, they necessarily had an interest in the case, and the only way to preserve their interest was to allow them to intervene in the Iowa proceedings. We agree.

Iowa Rule of Civil Procedure 1.407(1) provides for the right to intervene when (1) “a statute confers an unconditional right to intervene” or (2) “the applicant claims an interest relating to the property or transaction” and whose rights cannot otherwise be protected. Iowa R. Civ. P. 1.407(1).<sup>4</sup> Iowa Code section 600.11 provides that notice of an adoption hearing be given to: “A person who has been granted visitation rights with the child to be adopted pursuant to section 600C.1.” While the grandparents were not granted visitation rights under Iowa Code section 600C.1, they were at least granted the right to request visitation in any adoption proceeding by the June 23, 2008 Nevada court order and previously actually granted visitation rights in the October 5, 2006 Nevada district court order. While the Nevada court orders are somewhat internally inconsistent, it is apparent the grandparents at a minimum retained the right to request visitation. While retaining jurisdiction over T.D., the Nevada court ordered on June 23, 2008, that the grandparents be given notice of any adoption proceeding in Iowa and “that the [grandparents] shall have a clear reservation of rights to request specific visitation with the minor child in any adoption proceedings in Iowa.” The only way for the grandparents to present their case

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<sup>4</sup> “Although we do not automatically apply the rules of civil procedure to a juvenile proceeding, we have permitted applicants to intervene in a termination of parental rights proceeding.” *In re H.N.B.*, 619 N.W.2d 340, 343 n.3 (Iowa 2000) (citing *In re A.G.*, 558 N.W.2d 400, 402 (Iowa 1997) (allowing a grandmother to intervene in child-in-need-of-assistance proceeding); *In re J.R.*, 315 N.W.2d 750, 752 (Iowa 1982) (allowing grandparents to intervene in a termination-of-parental-rights proceeding), *overruled on other grounds by In re B.B.M.*, 514 N.W.2d 425, 428 n.1 (Iowa 1994)).

and have their request for visitation considered by the Iowa district court in an adoption hearing, would be to grant their petition for intervention. We believe that under Full Faith and Credit, both Iowa Rule of Civil Procedure 1.407(1) and Iowa Code section 600.11 must be read to allow the grandparents' intervention.

Next, the adoptive parents argue that the grandparents have no standing to intervene based upon their status as grandparents. They assert that along with the biological parents' rights, the grandparents' rights were terminated in Nevada more than a year prior to the adoption petition being filed. Thus, they claim that the grandparents no longer had any legal rights to T.D. when they filed their petition for intervention. See *In re K.T.*, 497 N.W.2d 163, 163 (Iowa Ct. App. 1992) (finding that grandparents did not have standing to challenge an adoption decree).<sup>5</sup> However, in this case the grandparents' right to intervene does not rely solely on their status as grandparents. Compare *B.B.M.*, 514 N.W.2d at 430 (holding that in voluntary adoption proceedings, grandparents do not have the right to intervene based upon the general desire to adopt the child), with *In re J.R.*, 315 N.W.2d 750, 752 (1982) (holding that where the biological parents' rights were involuntarily terminated and the children were old enough to have established a bond with the grandparents, the grandparents had the right to intervene). Rather, the grandparents' right to intervene stems from the Nevada court orders. See *In re H.N.B.*, 619 N.W.2d 340, 344 (Iowa 2000) ("Other factors

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<sup>5</sup> Additionally, our supreme court has distinguished between intervention in cases where the parents' rights are involuntarily terminated under Iowa Code chapter 232 and cases where the parents' rights are voluntarily terminated under Iowa Code chapter 600A in order to facilitate a private adoption. *B.B.M.*, 514 N.W.2d at 430. This case originated as the equivalent of an Iowa Code chapter 232 case in Nevada, but the adoptive parents filed their petition to adopt T.D. under Iowa Code chapter 600A.



may also exist to support the existence of a sufficient interest to justify intervention.”). As the district court found, the Interstate Compact on the Placement of Children applied in this case. Iowa Code § 232.158. Section 232.158(5)(a) provides:

Article IV—Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency’s state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law.

See *also* Nev. Rev. Stat. §§ 127.320-330 (adopting and setting forth the Interstate Compact on the Placement of Children). Accordingly, after the biological parents’ relinquished their rights to T.D., the Nevada court retained jurisdiction over T.D. and the Nevada DFS had temporary guardianship until an adoption was finalized. Pursuant to the Nevada court orders, the grandparents were temporarily given visitation rights, as well as the rights to notice of adoption proceedings and to intervene in the adoption proceedings. *Compare K.T.*, 497 N.W.2d at 165 (finding the grandparents did not have standing to challenge an adoption decree where they were not entitled to notice of the proceedings and were granted visitation rights only to be exercised pending adoptive placement of the minor child).

We find the district court erred in denying the grandparents’ motion for intervention. We therefore affirm the adoption of T.D. by the adoptive parents, but remand for the limited purpose of allowing the grandparents to request

visitation and have the district court rule on the merits of their request, keeping in mind the goal is not to appease either the grandparents or the adoptive parents, but to determine what would be in the long range best interests of T.D. Costs shall be taxed against the party that incurred the costs.

**ADOPTION AFFIRMED; REMANDED FOR HEARING ON VISITATION.**