

IN THE COURT OF APPEALS OF IOWA

No. 0-104 / 09-1830
Filed April 8, 2010

**IN THE INTEREST OF D.H. and S.A.H.,
Minor Children,**

**R.C. and S.C., Intervenors,
Appellants.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith,
Associate District Judge.

The maternal aunt and uncle appeal from the denial of their motions to
intervene in the child in need of assistance and termination of parental rights
proceedings. **AFFIRMED.**

Jessica J. Bromley and Jeff Carter of Jeff Carter Law Offices, P.C., Des
Moines, for appellants.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee.

Erin Carr, Des Moines, for father.

Laura Chipman of Pargulski Law Office, P.C., Des Moines, for mother.

Michelle Saveraid, Des Moines, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

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

EISENHAUER, J.

The maternal aunt and uncle appeal from the denial of their motions to intervene in the child in need of assistance (CINA) and termination of parental rights proceedings. They contend they should have been allowed to intervene due to their close relationship with the children in interest. They also contend the court erred in concluding custody was not a question before it at the time of termination. Finally, they contend it was in the children's best interest to allow them to intervene.

A party has a right to intervene in a child in need of assistance or termination of parental rights proceeding if the party is "interested" in the litigation. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). The court is accorded a certain amount of discretion to determine whether an intervenor is "interested" in the litigation. *Id.* Therefore, our review of the denial of a motion to intervene is for correction of errors at law, giving some deference to the district court's discretion. *Id.* The closeness of the relationship between the child in interest and the intervenor is a critical factor in determining the sufficiency of the interest of an intervenor. *In re H.N.B.*, 619 N.W.2d 340, 344 (Iowa 2000).

Although the maternal aunt and uncle claim they have a sufficiently close relationship with the children to support their petition to intervene in the CINA proceedings, the record belies their claim. They had little or no contact with the children in the eighteen months preceding the hearing on their motion. The children were only two and three years old at that time. The juvenile court found, "None of the evidence adduced at hearing suggests that there was anything

more than a typical aunt and uncle relationship.” The court determined the relationship was not sufficiently close to allow the maternal aunt and uncle to intervene. Given the limited involvement the maternal aunt and uncle had in the children’s lives, we find the court did not err in denying the motion to intervene.

The maternal aunt and uncle next contend the juvenile court erred in denying their motion to intervene in the termination of parental rights proceeding.¹ They argue custody was a question before the court at the time termination was contemplated. A review of the court’s order and supplemental order regarding the motion to intervene shows the court considered the issue of custody. There was no error.

Finally, the maternal aunt and uncle contend the court erred in denying their motion to intervene because it is in the children’s best interest to place them with family members. As previously noted, the maternal aunt and uncle’s relationship with the children was not significant. In contrast, the children had formed an attachment to their foster family. Removal from that home and placing them in the care of relatives with whom they had no real relationship would only serve to exacerbate their already significant emotional problems. Because it would not be in the children’s best interest, the court did not err in denying the motion to intervene.

¹ The petition on appeal was filed by the aunt and uncle after the termination of parental rights hearing regarding these children. On December 29, 2009, the court terminated the parental rights of the children’s parents. An appeal has been taken from the termination order and is now pending in this court.

We affirm the juvenile court orders denying the maternal aunt and uncle's motions to intervene.

AFFIRMED.