

IN THE COURT OF APPEALS OF IOWA

No. 0-528 / 10-0999
Filed August 11, 2010

**IN THE INTEREST OF J.J., R.J., M.M., and C.M.,
Minor Children,**

**R.L.J. and J.A.J., Grandparents,
Appellants/Intervenors.**

Appeal from the Iowa District Court for Crawford County, Charles K. Borth,
District Associate Judge.

Grandparents appeal the juvenile court's denial of their motion to
intervene in children in need of assistance proceedings. **AFFIRMED.**

William T. Early, Harlan, for appellants/intervenors.

Matthew J. Hudson, Harlan, for mother.

Peter A. Goldsmith, Ida Grove, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Michael R. Mundt, County Attorney, and Julie A. Schumacher, Assistant
County Attorney, for appellee State.

Thomas E. Gustafson, Denison, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Grandparents appeal the juvenile court's denial of their motion to intervene in their grandchildren's children in need of assistance proceedings. We affirm.

I. Background Facts and Proceedings.

S.J. is the father and S.P. is the mother of four children, the youngest born in 1999. The parents eventually separated, and the children were placed in the father's physical care. The children generally had visits with the mother on weekends and during the summer. The father's parents, R.L.J. and J.A.J., had a relationship with the children; one of the children had even lived with the grandparents for a time.

The father has a history of involvement with the Iowa Department of Human Services (Department). The children came to the attention of the Department again in March of 2008, after the father and one of the children got into a physical altercation. Services were offered to the family.

In February 2009, the State filed a petition¹ asserting the children were children in need of assistance (CINA). Shortly after the petition was filed, the father moved to Texas and placed the children in the physical care of their non-custodial mother and her husband. The father has had no further involvement in the CINA case.

A hearing on the CINA petition was held in March 2009, and the children's paternal grandmother, J.A.J., was present for the hearing. The parties stipulated

¹ A separate petition was filed for each child. Filings in each case were identical or substantially similar and for simplification we will refer to these matters in the singular.

to the Department's recommendations, and the court adjudicated the children CINA. The court continued the children's placement in the mother's custody with the protective supervision of the Department. A dispositional hearing was scheduled.

A dispositional hearing was held in May 2009, and J.A.J. was present for the hearing. The court continued custody with the mother, and it set a permanency hearing.

Following the dispositional hearing, the paternal grandparents filed a motion to intervene and an application to inspect the record. The motion sought intervention to ensure that the children's relationship with the grandparents would be considered in any future decisions regarding placement. The grandparents also requested they be allowed to inspect and copy records in the CINA proceeding as parties in interest. The mother resisted.

On June 11, 2009, the court entered its ruling denying the grandparents' motion. The court found there was no compelling reason to admit any additional parties to the proceeding. The court further stated:

[The Grandparents] remain statutorily as a potential placement alternative should the children's current placement with their mother be unsuccessful. This status does not automatically dictate that they be allowed to intervene as parties, and the court finds that it is not the children's best interests at this time to allow said intervention.

On the same day, the court entered its permanency order continuing the children's placement with the mother. The permanency goal was changed from reunification with the father to the transfer of custody of the children from the father to the mother.

Thereafter, some issues regarding the children's behaviors arose. Following a permanency hearing in March 2010, one of the children was placed in a group home for treatment purposes. Another child was placed in a mental health treatment facility, remaining in the custody of the mother. The two other children remained in the mother's custody. The permanency goal remained that the custody of the children be changed from the father to the mother.

On May 13, 2010, the grandmother filed a pro se motion to intervene in the CINA proceedings. The motion stated the "mother is making statements that are not true" and that the grandmother wanted to be heard. The grandmother also wanted visitation with the children. The court denied the grandmother's motion that day for the reasons it denied the first motion to intervene.

On March 25, 2010, the grandparents filed their "motion to intervene pursuant to [Iowa Code section] 232.91 [2009] and application to inspect record pursuant to [section] 232.147 and application for hearing." The grandparents asserted, as they did in their first motion:

[The grandparents] have routinely been the caregivers to [one of the children] over the years and have formed an emotional bond with all of the . . . children.

It is in the best interest of all of the . . . children to grant this [m]otion to ensure that the relationship between the minor children and [the grandparents] be considered by this [c]ourt in any future decisions regarding placement.

[The grandparents] have a direct interest in said proceedings as caregivers and grandparents and should be allowed to inspect and copy records made available to the other parties in this action

The grandparents' motion cited the Iowa Supreme Court's decision in *In re A.G.*, 558 N.W.2d 400, 404 (Iowa 1997), in support of their asserted right to intervene.

Both the mother and the State resisted the motion.

On June 3, 2010, the juvenile court entered its calendar entry and order denying the grandparents' motion. The court found A.G. to be distinguishable from the instant case, noting:

So long as the children are placed with their mother, [Iowa Code] section 232.102 [(2009)] does not apply and the paternal grandparents therefore have no legal interest for placement under that section. Unlike the grandmother in A.G., the [grandparents here] have no legal interest in the outcome of these proceedings at this time.

For the same reason, the court found the grandparents did not have a direct interest in the proceedings under section 232.147(5)(b) to allow them to inspect and copy records from the CINA proceedings.

The grandparents now appeal. They contend the juvenile court erroneously denied their motion to intervene, asserting they are “interested person[] within the meaning of the [Iowa Code],” because they have a statutory right to be considered for placement of the children in a juvenile court proceeding.

II. Scope and Standards of Review.

Our review of a motion to intervene is for the correction of errors at law. *In re H.N.B.*, 619 N.W.2d 340, 342 (Iowa 2000).

III. Discussion.

Iowa Rule of Civil Procedure 1.407 sets forth who is generally entitled to intervention.² A person may intervene under rule 1.407(1) when the person has

² “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.” *H.N.B.*, 619 N.W.2d at 343 n.3. (citing *A.G.*, 558 N.W.2d at 402; *In re J.R.*, 315 N.W.2d 750, 752 (Iowa 1982)).

“a legal right or liability that will be directly affected by the litigation.”³ “Although we are to liberally construe the rule of intervention, we must be certain the applicant has asserted a legal right or liability that will be directly affected by the litigation.” *H.N.B.*, 619 N.W.2d at 343. A person must have more than an indirect, speculative, or remote interest to intervene. *Id.* We consider statutory guidance in determining whether a person has a right to intervene. *Id.* Furthermore, intervention must be in the children’s best interests. *Id.* at 344. The juvenile court may exercise discretion in evaluating the sufficiency of the interest of the person seeking to intervene. *Id.* at 342-43.

In *A.G.*, our supreme court was faced with the question of whether a grandparent, who sought intervention prior to the CINA dispositional hearing, possessed a sufficient legal interest in the outcome of the dispositional hearing to allow the grandparent to intervene in the proceeding. *A.G.*, 558 N.W.2d at 404. The court concluded that because Iowa Code section 232.102(1)(a) granted a “relative” a statutory “legal right” to be considered for custody in the dispositional phase of a CINA proceeding, the grandparent in that case had a “clear, statutorily-created interest in the outcome of the CINA dispositional hearing.” *Id.* The court therefore found the grandparent had a right to intervene in the CINA proceedings. *Id.*

³ Iowa Rule of Civil Procedure 1.407(1), intervention of right, applies when there is a statutory unconditional right to intervene, or the person claims an interest in the “subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest. . . .” Here, the grandparents claim an interest in the CINA proceeding because they are relatives with whom the children could be placed.

There is no question that under *A.G.* and section 232.102(1)(a) the grandparents enjoy a statutory “legal right” to be considered for custody in the dispositional phase of a CINA proceeding. However, in the present case, we are far past disposition. The grandparents did not seek to intervene until after the court entered its dispositional order placing the children with their mother. The grandparents’ latest motion was filed about ten months after the dispositional order was entered. Unlike the grandparent in *A.G.*, whose motion was filed prior to the dispositional hearing, the grandparents here no longer have an interest in the outcome of the dispositional hearing.

It is true that should the custody question arise in the future, the grandparents may have both a legal right to be considered for custody placement of the children and an interest in the outcome of the proceedings. See, e.g., Iowa Code § 232.117(3)(c) (providing that relative may be considered for guardianship and custody if the court terminates the parental rights of the child’s parents). We further note that the juvenile court has previously advised the grandparents that they “remain statutorily as a potential placement alternative should the children’s current placement with their mother be unsuccessful.” However, at this time, custody is not in question, as three of the children remain in the mother’s custody, and one child has been placed in group home for treatment purposes only. The permanency goal remains that the custody of the children be placed with the mother. Consequently, we find no error in the juvenile court’s denial of the grandparents’ motion to intervene.

AFFIRMED.