

IN THE COURT OF APPEALS OF IOWA

No. 0-605 / 10-1143
Filed September 9, 2010

**IN THE INTEREST OF W.J.T. and J.T.,
Minor Children,**

**J.P., Intervenor,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

The former boyfriend of a mother whose children were adjudicated in need of assistance appeals from the denial of his request to intervene in the juvenile court proceedings. **APPEAL DISMISSED.**

Pamela A. Vandell, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant County Attorney, for appellee.

Michael Holzworth, Des Moines, for father.

Jennie Wilson of Wilson Law Firm, for mother.

Karl Wolle, Des Moines, attorney for minor children.

John Jellineck, Des Moines, guardian ad litem for minor children.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

TABOR, J.

The former boyfriend of a mother whose children were adjudicated in need of assistance appeals from the denial of his request to intervene in the juvenile court proceedings. The boyfriend contends he was denied an opportunity to challenge a protective order and a finding that he injured one of the boys. Because the juvenile court has closed the underlying case, we dismiss the boyfriend's appeal as moot.

I. Background Facts and Proceedings.

The juvenile court removed W.T. and J.T. from their mother's home after the youngest boy, age one, suffered a cigarette burn to his temple and bruise on his neck. The boys were in the care of the mother and her boyfriend, Justin, at the time of the injuries. In its July 20, 2009 removal order, the court found the mother was "unwilling to protect [the children] from possible perpetrator." The removal order allowed the mother visitation, but directed that Justin not be present at any visits. On August 24, 2009 the court adjudicated W.T. and J.T. as children in need of assistance (CINA). As part of the adjudicatory order, the court continued to prohibit contact between the children and Justin.

On March 25, 2010, Justin filed a petition to intervene in the CINA proceedings under Iowa Rule of Civil Procedure 1.407(1). His petition alleged the existence of a "no-contact" order restricting him from seeing the boys' mother. Justin argued his right to associate with his girlfriend was infringed by the "no-contact" order. At a hearing on April 27, 2010, Justin's counsel expanded his argument for intervention, asserting that he was denied due process by not having an opportunity to be heard on the finding that

he abused his girlfriend's child. The State, the father, the mother, and the guardian ad litem all opposed Justin's intervention request.

The juvenile court denied the petition to intervene on April 27, 2010. In that order, the juvenile court clarified that it was the responsibility of the mother and father to "assure that Justin . . . has no contact whatsoever with the children." Ten days later, Justin sought "reconsideration" of his intervention petition—citing Iowa Rule of Civil Procedure 1.904(2).¹ On June 22, 2010, the juvenile court denied his motion to reconsider, concluding Justin did not have an interest directly affected by the proceedings and that intervention was not in the best interests of the children. The court noted the order prohibiting contact with the children was not issued against Justin and he therefore had no legal right "to resist or modify it and no due process rights attached." Justin filed a notice of appeal on July 7, 2010.

On July 13, 2010, the juvenile court closed the CINA case, relieved the Department of Human Services from supervision, and terminated juvenile court jurisdiction over the children in interest. The order² determined the children—along with their family—had successfully complied with services and no longer required protection from the court.

II. Legal Standard for Intervention and Scope of Review.

A person may intervene in a CINA case only if the person has asserted a legal right or liability that will be directly affected by the litigation. See Iowa R. Civ. P. 1.407(1); *In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000). The intervention also must

¹ Because the motion to reconsider was in substance a motion to enlarge or amend, we find it extended the time to appeal. See *Woody v. Machin*, 380 N.W.2d 727, 729 (Iowa 1986).

² Matters that have transpired during the appeal may be considered for the limited purpose of determining whether the challenge is moot. *In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992).

be compatible with the best interests of the children involved in the juvenile proceedings. *In re B.B.M.*, 514 N.W.2d 425, 429 (Iowa 1994) (cautioning against elevating the interests of the intervenors over the interests of the children).

We review the denial of a motion to intervene for correction of errors at law. *In re H.N.B.*, 619 N.W.2d at 342. We accord a juvenile court a certain measure of discretion to deny intervention in proper cases. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). The discretion does not allow the juvenile court to deny intervention when the prerequisites of Rule 1.407(1)³ are met. *Id.* Rather, the discretion is exercised on the question whether the would-be intervenor is sufficiently “interested” in the litigation pending before the court. *Id.*

III. Mootness

As a threshold matter, we examine whether Justin’s appeal is moot, an issue not addressed by the parties but that we may raise on our own motion. *See Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co.*, 176 N.W. 722, 723 (Iowa 1920) (“It is our duty on our own motion to refrain from determining moot questions.”). Mootness “refers to cases which no longer present a justiciable controversy because the issues involved have become academic or nonexistent.” *Jenkins v. Branstad*, 421 N.W.2d 130, 133 (Iowa 1988).

A petition for intervention is “not maintainable” where the underlying litigation has been dismissed. *See Keehn v. Keehn*, 115 Iowa 467, 473, 88 N.W. 957, 959 (1902).

³ The rule states: “Upon timely application, anyone shall be permitted to intervene in an action . . . [w]hen the applicant claims an interest relating to the . . . transaction which is 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, unless the applicant’s interest is adequately represented by existing parties.”

Less than a week after Justin filed his notice of appeal, the juvenile court terminated its jurisdiction over W.T. and J.T. Juvenile court orders prohibiting the parents from allowing contact between Justin and the children as part of the CINA case are no longer in force. *Cf.* Iowa Code § 664A.3 (2009) (criminal no-contact order has force and effect until it is modified by subsequent court action or terminated upon final disposition). Any interest Justin had in being heard concerning the protective order or the finding underlying the order that he caused physical injury to his girlfriend's child was extinguished when the juvenile court terminated its jurisdiction over the CINA case. We see no relief that can be granted to Justin now that the juvenile court has closed the underlying case. Because this case no longer presents a justiciable controversy, we dismiss the appeal as moot.

APPEAL DISMISSED.