

IN THE COURT OF APPEALS OF IOWA

No. 2-1047 / 12-1809
Filed December 12, 2012

**IN THE INTEREST OF J.H.,
Minor Child-Appellant,**

**T.H., Intervenor,
Appellant.**

Appeal from the Iowa District Court for Marshall County, Stephen A. Owen, District Associate Judge.

A step-father appeals a juvenile court ruling denying his motion to intervene in pending child-in-need-of-assistance proceedings. **AFFIRMED.**

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, for appellant intervenor.

Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for minor child-appellant.

Thomas J. Miller, Attorney General, Julia S. Kim, Assistant Attorney General, Jennifer Miller, County Attorney, and Joshua Vander Ploeg, Assistant County Attorney, for appellee State.

Reyne L. See of Peglow, O'Hare & See, P.L.C., Marshalltown, for appellee mother.

Jennie Wilson-Moore of Wilson Law Firm, Marshalltown, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

A stepfather appeals a juvenile court ruling denying his motion to intervene in pending child-in-need-of-assistance proceedings. We affirm.

I. Background Facts and Proceedings.

The child at issue in this case was born in 2002. His biological father died when the child was very young. In 2006, the child's mother married T.H., who is, by way of the marriage, the child's stepfather.¹ Two children were born of this marriage. Though the stepfather is the only father the child has ever known, the child considers the stepfather to be his father, and the child and stepfather share a close bond, a formal adoption by the stepfather has never been effectuated.

The mother has a history of mental health and related anger-management issues. The parents have had a rocky relationship, plagued with unpleasant arguments, to say the least. Additionally, the mother's relationship with the child has been quite difficult for many years and has been characterized by arguments and physical aggression. The difficulties between the mother and the child have contributed to, and sometimes exacerbated, the conflicts between the parents.

In 2011, the stepfather filed a petition for dissolution of marriage. The parents reached an agreement early on to place all of the children in the stepfather's temporary care with the mother receiving visitation.² After a short reconciliation, the parents again separated in April 2012 after another domestic incident. The stepfather commenced a domestic abuse action against the mother, resulting in a no-contact order between the parents. The half-siblings

¹ We will refer to T.H. as "the stepfather" for purposes of clarity in this opinion.

² The parents' youngest child was not yet born at that time.

remained with the stepfather; however, the mother made the child come and live with her because the child was her biological child, and not the stepfather's.

The domestic violence incident was reported to the Iowa Department of Human Services (Department), and its assessment of the incident led to a founded child abuse report against the mother for denial of critical care. The Department's case worker noted in her report that the mother and the child's relationship continued to be strained and volatile, and the child's separation from his stepfather had been very difficult for the child.

On May 31, 2012, the mother signed a voluntary placement agreement requesting she be relieved of the child's care and custody, pursuant to Iowa Code section 232.2(6)(k) (2011) due to her and the child's relationship issues, as well as frequent and intense disputes that were getting more physical between them. The mother stated she had to restrain the child due to him pushing, kicking, and hitting her. The child was then placed in foster care.

The parents then requested the district court modify their temporary custody arrangements, each requesting all the children be placed with him or her. After a hearing, the court entered its order in June 2012 finding the new issues between the parents constituted a substantial change in circumstances. The court placed the child's half-siblings in the parents' temporary joint custody and joint physical care. However, the court declined to provide for the child at issue here in its order, concluding the stepfather

has no legal rights to that child's custody or visitation. The court does not mean to imply that [the stepfather's] contact with [the child] would be harmful. Such contact could actually help [the mother] with [the child]. The court simply has no legal authority to mandate contact over [the mother's] objection.

In early July 2012, the State filed its petition asserting the child was a child in need of assistance (CINA). Shortly thereafter on August 1, the stepfather filed his motion to intervene in the CINA proceeding “for placement of the child as another suitable person and a possible guardian for the child.” Additionally, the stepfather asserted in his motion that he was an interested party whose rights could be directly affected by the action and that it was in the child’s best interests that he be allowed to intervene.

The next day, the juvenile court entered its order adjudicating the child CINA. It subsequently set a hearing for the stepfather’s motion. On August 21, the juvenile court entered its dispositional order approving the child’s placement with his biological paternal grandparents. It did not address or mention the stepfather’s motion.

On August 30, 2012, the day of the hearing on the stepfather’s motion, the child’s attorney filed the “child’s position statement on motion to intervene.” It stated:

[The child] is ten years old; his preference is very strong; he wants contact with both of his parents and defends both of them; and his reasons are mature and reasonable under the circumstances. In fact, [the child] does not believe that his mother does not really want him to not have contact with his father.

The child argued the stepfather had a legal interest in the case because he wanted to be considered as a family placement during the time the mother is working to regain custody and, “in the event reunification with the mother is not possible or her parental rights are terminated, to assume guardianship of the child and/or adopt the child.” In either case, the child wished “to be placed with his father and with his [half-siblings] at all times possible; alternatively, to have

visitation with these very important persons in his life.” The child reiterated he wanted the stepfather to be a part of his proceedings even if reunification continues to go smoothly with the mother and ultimately occurs.

At the hearing, the father requested he be permitted to intervene. He acknowledged the child was now in the care of the child’s relatives, but he asserted he was an interested party and his intervention was in the child’s best interests. He noted that at some point in time, he may consider requesting the child be placed with him. The mother resisted, and the State essentially agreed with the mother’s position. However, the child’s attorney, the child’s separate guardian ad litem, and the Department all agreed the stepfather should be permitted to intervene given the close relationship between the stepfather and the child.

On September 24, 2012, the juvenile court entered its order denying the stepfather’s motion. The stepfather now appeals.

II. Discussion.

Iowa Rule of Civil Procedure 1.407 sets forth who is generally entitled to intervention.³ A person may intervene under rule 1.407(1) when the person has “a legal right or liability that will be directly affected by the litigation.” “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.” *In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000). A person must have

³ Although the rules of civil procedure do not automatically apply to a juvenile proceeding, our supreme court has permitted applicants to intervene in CINA proceedings. See, e.g., *In re A.G.*, 558 N.W.2d 400, 403-05 (Iowa 1997) (finding a grandmother had a right to intervene in the dispositional phase of the CINA proceeding involving her granddaughter).

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 child'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. 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. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997).

Here, the stepfather and child cite section 232.117 as the statutory source of the stepfather's asserted legal right to intervene. "Section 232.117(3) specifies those eligible to serve as guardian or custodian *of a child whose parents' rights have been terminated*," including a "relative or other suitable person," among others. *A.G.*, 558 N.W.2d 403 (emphasis added); *see also* Iowa Code § 232.117(3)(c). Although the stepfather may be a "suitable person" under the statute, there has been no termination of parental rights in this case and the permanency goal remains reunification of the child and the mother. The cases cited by the stepfather and the child concerning section 232.117(3) are distinguishable because in those cases, the parental rights had already been terminated when intervention was sought. *See, e.g., In re E.G.*, 738 N.W.2d 653, 654 (Iowa Ct. App. 2007) (involving intervention of a foster parent after termination of parental rights); *H.N.B.*, 619 N.W.2d 340, 341 (Iowa 2000) (same). Consequently, because the mother's parental rights have not been terminated, the stepfather has not been afforded a legal right at this time by that statute. We

find no error in the juvenile court's denial of the stepfather's motion to intervene based upon section 232.117(3)(c).

The child also asserts section 232.104(2) provides a legal right to the stepfather to intervene in the case. That section provides options to the juvenile court "[a]fter a permanency hearing," including entering an order to either transfer guardianship and custody of the child to a suitable person or transfer custody of the child to a suitable person for the purpose of long-term care. See Iowa Code § 232.104(2)(d). Again, while the stepfather may qualify as a "suitable person" under the statute, the statute does not provide him any "legal right that the proceeding will directly affect," given the current placement of the child in the care of his paternal grandparents, the reunification goal with the mother, and the present disposition of the case. We find no error in the juvenile court's denial of the stepfather's motion to intervene under section 232.104(2).

Finally, we agree with the juvenile court that intervention in the CINA proceeding by the stepfather at this time was not in the child's best interests. There is no question the child wishes the stepfather to be a part of his life, and the child, through his attorney, has been able to assert such in the CINA proceeding. Additionally, we recognize the child's wishes to be with his half-siblings. However, at this point, the reunification goal remains placement of the child with his mother. We agree with the juvenile court's assessment that the stepfather has not supported the mother's parenting of the child and at times has attempted to undermine their relationship, contrary to the present reunification goal. Given the friction between the mother and stepfather, as well as the stepfather's interference with the child and mother's relationship, we conclude

the juvenile court did not err in finding the stepfather's intervention at this time was not in the child's best interests.

For the above-stated reasons, we conclude the juvenile court did not err in denying the stepfather's motion to intervene. We reiterate the court's assessment for the benefit of the parents: "What is painfully obvious [here] is that [the child] has been the one to most suffer by the conduct of his mother and stepfather." Although the stepfather cannot intervene in the CINA proceeding at this time, it is readily apparent these parents will be involved in each other's lives for many years, given the ages of their children. It is time for the parents to put their children first before their petty disputes and work together as grownups for the best interests of all of their children.

AFFIRMED.