

IN THE COURT OF APPEALS OF IOWA

No. 2-152 / 11-1940
Filed March 14, 2012

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

**L.M.T., Intervenor,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

The paternal aunt appeals from the juvenile court order placing the child in
the custody and guardianship of the Iowa Department of Human Services.

AFFIRMED.

Jacob R. Koller of Simmons Perrine Moyer Bergman, P.L.C., Cedar
Rapids, for appellant L.M.T.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee State.

Ryan P. Tang of the Law Office of Ryan P. Tang, P.C., Cedar Rapids, for
intervenors K.R. and K.R.

Julie Trachta, Linn County Advocate, Cedar Rapids, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

L.T., the paternal aunt of J.T., appeals from the juvenile court order placing him in the custody and guardianship of the Iowa Department of Human Services (DHS). She contends the court erred in failing to award her custody and guardianship of the child. We review her claim de novo. See *In re E.G.*, 745 N.W.2d 741, 743 (Iowa Ct. App. 2007). The paramount concern is the best interest of the child. *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992).

J.T. is eight years old. His father is deceased. J.T. was removed from his mother's care in March 2010 and adjudicated in need of assistance (CINA) in June 2010. His mother's parental rights were terminated in August 2011.¹

J.T. was in the custody of the DHS for placement with relatives during the CINA proceedings. Part of the time he was placed with L.T.; however, at the end of the 2010-11 school year, J.T.'s care began alternating between L.T. and his maternal aunt and uncle in two-week intervals. This arrangement continues. L.T. and the maternal aunt and uncle moved to intervene in the CINA proceedings in May 2011, and the court granted the motions as to any post-termination placement proceedings regarding J.T.'s custody and guardianship.

In August, October, and November 2011, hearings were held regarding J.T.'s custody and guardianship. On November 21, 2011, the juvenile court entered its order placing J.T. in the custody and guardianship of the DHS for continued relative placement and "determination of a pre-adoptive placement." The court found both L.T. and the maternal aunt and uncle love J.T. and can

¹ This court affirmed the mother's appeal of the termination in *In re J.T.*, No. 11-1304 (Iowa Ct. App. Nov. 23, 2011).

provide him with safe and loving homes. The court further found J.T. was bonded with both sides of his family. The court then determined it was in J.T.'s best interests to be placed in the custody and guardianship of the DHS, noting J.T. is eligible for an adoption subsidy to help defray the expense of his care only if placed with the department. The court ordered the DHS to submit a progress report by January 9, 2012, and directed the report be provided to the parties at least ten days prior to January 9. Any party with an objection to the report was to file objections prior to January 9.

L.T. challenges the juvenile court's placement order. She argues placement of custody and guardianship with her is in the child's best interests. We disagree. Once an order for termination of parental rights is entered, the court must place guardianship and custody with:

- a. The department of human services.
- b. A child-placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. A parent who does not have physical care of the child, other relative, or other suitable person.

Iowa Code § 232.117(3) (2011). Here, the court was presented with efforts by two relatives of the child to gain custody and guardianship so they could ultimately adopt the child. The evidence presented at the hearing indicates both families can provide a safe and loving home for the child. There are some concerns regarding L.T.'s ability to foster a relationship between J.T. and the maternal side of his family, and there is evidence J.T. would prefer to live with his maternal aunt and uncle. However, it is undisputed both families would be excellent custodians of J.T.

Given the difficulty in deciding between two highly capable homes for J.T., the juvenile court did not err in placing custody and guardianship with the DHS for determination of a pre-adoptive placement. Not only does the DHS have expertise in making such determinations, but placing the child in the department's custody and guardianship will provide an adoption subsidy for the child's care. The trial court noted the DHS's responsibility as guardian to "make important decisions, which have a permanent effect on the life and development of that child and to promote the general welfare of that child." The court also noted its responsibility for continued oversight of the adoption process. Because it is in the child's best interests to place J.T.'s custody and guardianship with the DHS, we affirm.

AFFIRMED.