IN THE COURT OF APPEALS OF IOWA

No. 2-878 / 12-1300
Filed November 15, 2012

IN THE INTEREST OF K.M.H. AND E.R.M., Minor Children,

SUSAN MARTIN, Intervener,
Intervener-Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A great-grandmother contends the juvenile court (1) erred in denying her contact with her great-grandchildren after their mother's parental rights were terminated, (2) failed to consider her as an option for adoption, and (3) failed to follow "established protocol and procedures for choosing one adoptive placement over the other." **AFFIRMED.**

Mark D. Reed of Marberry Law Firm, Urbandale, for appellant intervener.

Thomas J. Miller, Attorney General, Kristi A. Traynor, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Kathryn Miller of Juvenile Public Defender, Des Moines, guardian ad litem and attorney for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

VAITHESWARAN, P.J.

The juvenile court terminated a mother's parental rights to her two children and appointed the Iowa Department of Human Services as their guardian. The court further ordered the department to "make every effort to establish a stable placement for the children in interest by adoption or other permanent placement."

Following termination, the children's great-grandmother moved to intervene in the proceedings and applied to remove the department as guardian and custodian of the children. *See* Iowa Code § 232.118(1) (2011) (allowing a court to remove a court-appointed guardian). The juvenile court granted her motion to intervene but denied her motion to have the department removed as guardian. The court reasoned that (a) the children had been in foster care for over fourteen months; (b) the foster home provided them "the safety, continuity, and stability as well as the nurtur[ing] these children needed"; (c) the children had begun to engage in the "repair work necessary to deal with the traumas they . . . suffered both before and [after] the removal"; and (d) by the time of the dispositional hearing in June 2011, the great-grandmother was "clearly advised that the children would not be placed with her" and "did not act until May of 2012 to try to have the children moved to her."

On appeal of this order, the great-grandmother asserts that the department: (1) denied her contact with the children, (2) failed to consider her for adoption, and (3) failed to follow "established protocol and procedures for choosing one adoptive placement over the other." On our de novo review, we disagree with these assertions. *See In re E.G.*, 745 N.W.2d 741, 743 (Iowa Ct. App. 2007) (setting forth the standard of review).

We begin with the great-grandmother's assertion that the department deprived her of contact with the children. In fact, the foster mother voluntarily facilitated weekly visits with the great-grandmother for several months following the children's removal, and allowed regular telephone contact. In time, however, she expressed concern that the great-grandmother was failing to set appropriate limits during the visits. At that point, the department curtailed visits. The great-grandmother did not take steps to intervene and challenge this action during the child-in-need of assistance proceeding and, for that reason, cannot now be heard to complain about the absence of continuing contact. *See In re A.G.*, 558 N.W.2d 400, 405 (Iowa 1997) (indicating that a grandmother had a right to intervene in a juvenile court proceeding).

This brings us to the great-grandmother's second point: the department's failure to consider her as a placement option. Two months after the children were removed, the great-grandmother tested positive for marijuana in her hair. A department employee informed her that if she wished to be considered as a placement option she needed to be substance-free. In response, the great-grandmother said she would obtain a home study to assess her qualifications as an adoptive placement.

The great-grandmother submitted to a home study, which spanned three visits in late 2011. The resulting report was unequivocally positive. The evaluator noted that the great-grandmother had been a part of the children's lives since they were born and served as their exclusive caretaker for the three months preceding their removal. The evaluator also cited several solicited and unsolicited references that were supportive of her adoption application.

According to the evaluator, these references described the great-grandmother "as a stable person with a good support system through family and friends." The evaluator characterized the great-grandmother as "a very loving and nurturing individual" who was "able to provide a safe, nurturing, and stable environment" for the children. As for the positive marijuana test result, the evaluator cited the great-grandmother's explanation that she was exposed to marijuana smoke in her granddaughter's home. This was the same explanation the great-grandmother proffered at the post-termination hearing on her application to have the department eliminated as guardian.

The department received and considered this positive home study, together with other information, and approved the great-grandmother's application for adoption. Based on this evidence, we disagree with the juvenile court that the great-grandmother failed to make efforts to have the children moved to her care. Although she did not formally intervene during the child-in-need-of-assistance proceedings, she consistently expressed a desire to assume a parenting role. The department's adoption-approval order presumably reflects a conclusion that the great-grandmother would have been an effective caretaker.

That said, the foster mother was also an effective caretaker. Faced with these competing requests, the department turned to the children's therapist for guidance. The therapist expressed a preference for the foster mother. While she conceded the great-grandmother cared for the children for "extended periods of time," she testified based on reports she had read that the great-grandmother "didn't provide routine and consistency and rules and structure."

In deciding whether to remove a court-appointed guardian, the focus is on the children's best interests. *See E.G.*, 745 N.W.2d at 743. In light of the therapist's recommendation, we conclude the department acted in the children's best interests by opting to leave the children with the foster parent rather than transferring them to the great-grandmother's care.

This brings us to the great-grandmother's third argument: an assertion that the department failed to follow "established protocol and procedures for choosing one adoptive placement over the other." The great-grandmother does not identify the procedures that, in her view, were not followed. Absent argument or evidence on this point, we cannot conclude that the department gave short shrift to her adoption bid.

We affirm the denial of the great-grandmother's application to have the department removed as guardian of the children.

AFFIRMED.