

**IN THE COURT OF APPEALS OF IOWA**

No. 3-600 / 13-0646  
Filed August 21, 2013

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

**A.W., Intervenor,  
Appellant.**

---

Appeal from the Iowa District Court for Poweshiek County, Rose Anne Mefford, District Associate Judge.

A.W. appeals from the juvenile court's denial of her motion to intervene.

**AFFIRMED.**

Mellissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Rebecca Petig, County Attorney, for appellee.

Michael W. Mahaffey of Mahaffey Law Office, Montezuma, for appellee M.G.

Fred Stiefel of Stiefel Law Office, Victor, attorney and guardian ad litem for minor children.

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

**BOWER, J.**

A.W. appeals the juvenile court's denial of her motion to intervene. She contends she was not afforded due process when the court denied the motion without a hearing. She also challenges the court's finding she lacks standing to intervene.

Because A.W.'s motion does not allege a sufficient interest to warrant intervention in the child-in-need-of-assistance proceedings, the juvenile court was within its discretion to deny the motion without a hearing. We affirm.

***I. Background Facts and Proceedings.***

The children at issue came to the attention of the Department of Human Services (DHS) after their mother's death. Because no legal father could assume the role of parent, the children were adjudicated to be children in need of assistance (CINA) on February 28, 2013, and were placed in the custody of the DHS.

A.W., a family friend, filed motions to intervene on March 18, 2013. In the motions, she identified herself as "the mother's best friend and former caretaker" of the children. She stated the mother and children had "formerly lived with" her. A.W. further alleged she was "an interested party because, having been the mother's best friend, she is [] like a family member to the child[ren] and she is interested in placement."

A dispositional hearing was held on April 4, 2013. Because the motions to intervene were not set to be heard at the dispositional hearing, A.W. did not have notice of the hearing and did not attend. The court raised the motion to intervene

at the hearing anyway, asking the State and the guardian ad litem their positions on the matter. Both the State and guardian ad litem opposed the motions, citing A.W.'s lack of standing.

The guardian ad litem then raised the issue of whether A.W. would "appreciate the opportunity to make her own argument at some point." The juvenile court noted that while the motion had not been set for a hearing, "[i]t's the court's position as well that there is no legal standing for this person, so these motions are going to be overruled and denied."

In the April 4, 2013 dispositional order, the juvenile court summary denied the motions to intervene. On April 9, 2013, A.W. filed an application for hearing and a motion to reconsider. The juvenile court denied both on April 11, 2013, stating that A.W. lacked legal standing to intervene.

## ***II. Scope and Standard of Review.***

We review a denial of a motion to intervene for the correction of errors at law. *In re H.N.B.*, 619 N.W.2d 340, 342 (Iowa 2000). However, the lower court is afforded some discretion. *Id.* The court exercises this discretion when determining whether an applicant for intervention is "interested" in the litigation before the court. *Id.* at 342-43.

## ***III. Analysis.***

Iowa Rule of Civil Procedure 1.407 sets forth the criteria for intervening in a legal action. This includes CINA proceedings. *In re A.G.*, 558 N.W.2d 400, 402-03 (Iowa 1997). A person may intervene as a matter of right when a statute unconditionally confers such a right or "[w]hen the applicant claims an interest

relating to the property or 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." Iowa R. Civ. P. 1.407(1). One is "interested" if the legal proceeding will directly affect a legal right. *A.G.*, 558 N.W.2d at 403. "An interest that is indirect, remote or conjectural is generally insufficient to support intervention." *Id.* For instance, "the mere interest or desire to adopt a child will not qualify as a sufficient interest." *H.N.B.*, 619 N.W.2d at 343.

In her motion to intervene, A.W. claimed she had an interest in the CINA proceeding because "she would like to be considered as a placement option." Although not specifically cited in her motion, Iowa Code section 232.102(1)(a) (2013) allows the court to transfer the legal custody of a child to "[a] parent who does not have physical care of the child, other relative, *or other suitable person*" after a dispositional hearing. (Emphasis added.) Because the term "suitable person" is not defined by the legislature, the court has discretion to determine whether a person is a "suitable person" based on the particular facts of each petition for intervention. *H.N.B.*, 619 N.W.2d at 343. In so doing, the court must consider the sufficiency of the interest asserted by the intervenor under the "suitable person" provision in light of the nature of the proceeding and surrounding facts and circumstances. *Id.* "The intervention must be compatible with the child's best interest." *Id.* at 344.

In *H.B.*, our supreme court outlined various facts to be considered in determining whether one is a "suitable person" to be considered for custody. *Id.*

The critical factor in making such a determination is the closeness of the relationship between the child in interest and the intervenor. *Id.* Another factor is the existence of other prospective adoptive parents who maintain a strong relationship with the child. *Id.* Other factors may also support the existence of a sufficient interest to justify intervention. *Id.* However, not every non-relative interested in adopting a child qualifies as a “suitable person.” *Id.* at 345.

We find A.W.’s motion to intervene failed to allege sufficient facts to warrant a hearing on her motion to intervene. In her motion, A.W. asserts she was the mother’s best friend and former caretaker of the children. She alleges the mother and children had lived with her, although it is unclear when that living arrangement occurred and for how long it lasted. A.W. does not allege she cared for the children for any substantial amount of time or provided for their support in any substantial way. See *In re C.L.C.*, 479 N.W.2d 340, 344 (Iowa Ct. App. 1991) (finding non-relatives sufficiently interested to intervene in termination-of-parental-rights proceeding where they spent significant time with the children over a two-year period, were involved in the children’s routine care, and provided over \$5000 in financial support). Her allegation that she is “like family” is not enough.

Because A.W. failed to allege facts to support intervention, the juvenile court did not err in denying the motion to intervene without a hearing. Accordingly, we affirm.<sup>1</sup>

**AFFIRMED.**

---

<sup>1</sup> Although A.W.’s motion to intervene in the CINA proceedings was denied, the DHS may still consider her as a placement option. See Iowa Admin. Code r. 441-202.4.