

IN THE COURT OF APPEALS OF IOWA

No. 3-658 / 13-0740

Filed July 10, 2013

**IN THE INTEREST OF S.O. AND L.O.,
Minor Children,**

**E.W., Grandmother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A grandmother appeals the denial of her application to remove the Department of Human Services as guardian of two of her grandchildren.

AFFIRMED.

Jamie A. Splinter of Splinter Law Office, Dubuque, for appellant grandmother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Ralph Potter, County Attorney, for appellee State.

Kristy Hefel of the Dubuque Public Defender's Office, Dubuque, attorney and guardian ad litem for minor children.

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

POTTERFIELD, J.

A grandmother appeals the denial of her application to remove the Department of Human Services (DHS) as guardian of her grandchildren, L.O. and S.O.

I. The juvenile court terminated the parental rights of L.O. and S.O.'s mother and father pursuant to their consent. DHS was appointed their guardian and custodian.

Following termination of parental rights, the children's grandmother moved to intervene in the proceedings and applied to remove DHS as guardian and custodian of the children. The juvenile court granted her motion to intervene, but denied her motion to have DHS removed as guardian. The grandmother appeals, contending DHS acted unreasonably in not placing the children with her.

II. We review de novo actions seeking to remove DHS as guardian and challenging custody placement. *In re E.G.*, 738 N.W.2d 653, 654 (Iowa Ct. App. 2007). We review the facts and law and adjudicate rights anew but give weight to the findings of fact of the juvenile court. *Id.* The court's core role in these proceedings is to ensure placement is in the best interests of the child. See Iowa Code § 232.1 (2013); *E.G.*, 738 N.W.2d at 657.

III. If parental rights are terminated, the juvenile court must contemplate the placement for the child. *In re T.R.*, 705 N.W.2d 6, 11 (Iowa 2005). Iowa Code section 232.117(3) lists the options for transfer of guardianship and custody of children.

If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's parents, the court shall transfer the guardianship and custody of the child to one of the following:

- 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). There is no preference indicated in this section between subsections (a) through (c). See *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992) ("There is no statutory preference for a relative [post-termination]. The paramount concern is the best interest of the children."). This comports with our supreme court's interpretation of the Adoption and Safe Families Act in *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000), as well as Iowa Code section 232.1, which states: "This chapter shall be liberally construed to the end that each child . . . shall receive . . . the care, guidance and control that will best serve the child's welfare."

A person qualifying as a "suitable person" under section 232.117(3) has a legal right to be considered as a guardian and custodian of the child. *In re C.L.C.*, 479 N.W.2d 340, 343 (Iowa Ct. App. 1991). The juvenile court has discretion to determine who is a "suitable person" under section 232.117(3). *Id.*

It is DHS's duty and right, however, to choose the placement for these children. See *In re E.G.*, 745 N.W.2d 742, 744 (Iowa Ct. App. 2007); see also Iowa Code § 232.2(21) (finding guardian's role is to "make important decisions which have a permanent effect on the life" of the child); *E.G.*, 738 N.W.2d at 657

("[W]hen the legislature gave the juvenile court the authority to specify the child's best interests, it granted authority to the juvenile court to direct the *type* of placement the [DHS] was to make, but did not empower the juvenile court to direct a *specific* placement, though the court had the power to monitor the placement.").

The juvenile court retains the authority to remove DHS as guardian if the department acts unreasonably or irresponsibly in discharging its duties. See Iowa Code § 232.118(1) (allowing a court to remove a court-appointed guardian); *E.G.*, 745 N.W.2d at 744.

DHS did not act unreasonably in carrying out its duties as guardian by recommending continuing placement of S.O. and L.O. with adoptive foster parents. See *E.G.*, 745 N.W.2d at 744. The grandmother's protective capacity is open to question with regard to these children. There was a previous finding that the grandmother's adopted daughter (who is L.O. and S.O.'s older stepsister) had acted in a sexually inappropriate manner with L.O. and S.O. while all three children were in the grandmother's care. The grandmother did not believe or minimized the claims of the two younger grandchildren, which resulted in founded child abuse assessments against the grandmother for failure to provide adequate supervision and the loss of the grandmother's foster care license.

L.O. and S.O. are doing well in their current placement and, in March 2013, the children's therapist reported "it is imperative" for the children's mental health recovery that they not be placed in the grandmother's care.

Upon our de novo review of the record, we find the juvenile court properly declined to remove DHS as guardian of these children and continued placement with their foster family for adoption.

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

AFFIRMED.