

IN THE COURT OF APPEALS OF IOWA

No. 3-816 / 13-0554
Filed September 5, 2013

**IN THE INTEREST OF D.E.,
Minor Child,**

**R.R., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

R.R. appeals from the denial of his oral motion to intervene and a permanency order. **AFFIRMED.**

William Bushell of Bushell Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Samantha Gronewald of Sullivan & Ward, West Des Moines, for mother.

ConGarry Williams, Des Moines, attorney for minor child.

Lane Lucas, Des Moines, guardian ad litem for minor child.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

R.R. appeals the juvenile court's denial of his oral motion to intervene, which was made in the middle of the permanency hearing. He contends he is the only father the child has ever known and the court should have granted his oral motion to intervene and should have allowed D.E. to be placed with him. We find no error in the court's denial of the motion to intervene or the entry of the permanency order, and we, therefore, affirm.

Our review of a denial of a motion to intervene is for the correction of errors at law. Although our review is on error, we accord some discretion to the district court. The district court exercises this discretion when determining whether an applicant intervenor is "interested" in the litigation before the court.

In re H.N.B., 619 N.W.2d 340, 342-43 (Iowa 2000).

R.R. is not the biological father of the teen, D.E., but is the father of D.E.'s younger half-sibling. This child-in-need-of-assistance proceeding resulted from the mother, S.E.'s mental health and substance abuse issues. Domestic violence concerns between S.E. and R.R. came to light. R.R. was not living in the home at the time of the children were removed from the mother's care in March 2012. D.E. was placed with his maternal aunt at the time of his removal. D.E. has remained in her care since.

R.R. did not file a motion to intervene despite repeatedly¹ being notified of his lack of legal rights to D.E. and lack of standing to request visitation. More than a year after juvenile court involvement with this family—on the day of the permanency hearing—R.R. made an oral motion to intervene, stating, "We had

¹ There are references in the May 8, June 18, December 6, 2012, and January 15, 2013 transcripts concerning R.R.'s lack of standing and legal rights with respect to D.E.

previously thought the Court had recognized him as the equitable father” In fact, the father appeared late for the hearing and the motion was made in the middle of the hearing.

The court ruled:

What I have said previously is not that [R.R.] would be considered an equitable father in so much as that term of art and legal doctrine exists in the law in Iowa. I’ve not made such a finding. What I have said is that if it’s good for [D.E.] to receive services with him as a stepfather figure, then services, including visitation and things of that nature, would be made available because of [D.E.]’s age and his ability to express his wishes. And so I wasn’t going to deny [D.E.] contact with a person he wanted.

That didn’t mean that any type of placement that would have happened or could have happened or could happen with [R.R.] would be other than a suitable-person placement. So in light of that and in light of consideration of whether intervention is warranted, it is not And so it’s denied in terms of intervention status.

In sum, the court denied R.R.’s request to be a named party to the action. However, he was still afforded the opportunity to present exhibits and arguments from his attorney that he should be the court-ordered custodian of D.E. as a “suitable person” as provided in Iowa Code section 232.104(2)(d)(1) (2013).

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.

We acknowledge that our court has concluded that interested persons who have provided financial support, routine care of a child, shared their love and care for a child, and who may be given consideration as “suitable persons” to be awarded custody should be afforded the right to intervene. *In re C.L.C.*, 479 N.W.2d 340, 344 (Iowa App. 1991). However, an “indirect, speculative or remote interest” is not sufficient to “provide one a right to intervene.” *In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000). For instance, “the mere interest or desire to adopt a child will not qualify as a sufficient interest.” *Id.*

“The sufficiency of the interest asserted by the intervenor under the ‘suitable person’ provision is considered in light of the nature of the proceeding and surrounding facts and circumstances.” *Id.* Though R.R. did act as a stepparent to D.E. for some time, R.R. has no biological relationship to D.E. and was never married to D.E.’s mother. He was not in the home at the time of D.E.’s removal. R.R. has been allowed visitation with D.E., but D.E. informed his attorney and guardian ad litem that he wished to remain living with his aunt.

Under these facts we find no error in the court’s denial of R.R.’s motion to intervene. R.R.’s oral motion was made in the middle of the permanency hearing. R.R. did not request a hearing on the motion and no evidence was presented in support of the motion. Without evidence to support the conclusion that R.R. did indeed have sufficient interest to support his request to intervene, the motion was properly denied. Moreover the court was not obligated to delay

the proceedings until resolution of the motion, particularly where R.R. had been previously advised of his lack of standing.²

On March 26, 2013, the juvenile court filed its permanency order continuing the placement of D.E. in the custody of the Department of Human Services, with the goal of establishing a guardianship with D.E.'s maternal aunt. The aunt has cared for D.E. and provided stability and security to D.E. since the child was removed from the mother's care in March 2012. D.E. is doing well in her care and wishes to stay with her.

In view of D.E.'s desire to stay living with his aunt, his welfare, and his best interests, *see id.* at 344 (noting "the focus must always include the welfare and best interests of the child"), we affirm the permanency order and the court's denial of the motion to intervene.

AFFIRMED.

² We express no opinion as what the outcome should be in the event R.R. should file a subsequent motion to intervene.