

IN THE COURT OF APPEALS OF IOWA

No. 6-271 / 06-0381

No. 6-395 / 06-0264

Filed June 14, 2006

**IN THE INTEREST OF C.S. and E.S.,
Minor Children,**

**D.M. and K.M., Grandparents,
Appellants.**

Appeal from the Iowa District Court for Hancock County, Gerald W. Magee, Associate Juvenile Judge.

Grandparents appeal a juvenile court order granting them visitation with children who have been adjudicated to be in need of assistance. **AFFIRMED.**

T.J. Braunschweig, Algona, for appellants.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Karen Kaufman Salic, County Attorney, for appellee State.

Theodore Hova, Garner, for father.

Mark Laddusaw of Lynch & Lynch, Algona, for mother.

Brian Jones of Siegrist & Jones, P.L.C., Britt, for paternal grandparents.

Timothy Casperson of Berry & Casperson, P.L.C., Clear Lake, guardian ad litem for minor children.

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

PER CURIAM***I. Background Facts & Proceedings***

David and Beth are the parents of Cole, born in June 1997, and Emily, born in June 1998. The parents have a history of mental illness and domestic violence. In 1999 the parents voluntarily agreed to allow the maternal grandparents, David and Kelly, to become the children's legal guardians. The paternal grandparents, Richard and Elaine, had weekend visitation with the children. An attempt was made to return the children to the parents in 2002. However, the parents continued to engage in incidents of domestic violence.

The children were adjudicated to be in need of assistance under Iowa Code section 232.2(6)(n) (Supp. 2001) (parent's mental condition results in child not receiving adequate care). The children were placed in foster care from May 2002 until July 2003, when they were returned to the care of the parents. In October 2003, the children were temporarily removed from the parents after an incident of physical abuse between the parents. The children were soon placed with the mother, who had moved in with the maternal grandparents.

It became apparent that the children were being placed in the middle of adult conversations about their circumstances. The juvenile court specifically ruled, "Adult relatives in contact with the children shall not discuss this case with them or disparage any other relative in front of the children." Conflicts continued between all the adults in the case.

In March 2005, the mother moved out of the home of the maternal grandparents and reunited with the father. The guardian ad litem sought to place

the children with the paternal grandparents, while the State moved to have the children placed in foster care. A home study did not recommend the maternal grandparents be approved as a foster home based on “a level of dysfunction that would not be acceptable for the care and raising of children. Discipline issues, living environment and financial problems are not within acceptable standards.” The home of the paternal grandparents was approved as a foster home.

In August 2005, the juvenile court ordered that the children be placed with the paternal grandparents. The court found modification of the dispositional order was appropriate because of the following concerns:

the children continue to have behavioral problems, the children continue to be placed in the midst of family conflict, the living accommodations for the children at times are inappropriate, and other relatives have been approved for foster placement while current guardians have not been so approved.

The court ordered that visitation with the maternal grandparents would be at the discretion of the Department of Human Services. The maternal grandparents appealed. The juvenile court order was affirmed on appeal. *In re C.S.*, No. 05-1380 (Iowa Ct. App. Nov. 9, 2005). In separate proceedings in district court, on August 30, 2005, the maternal grandparents were removed as the children’s guardians and the paternal grandparents were named as legal guardians.

The Department agreed to provide the maternal grandparents with two hours of visitation every other week. The visitation was supervised because the maternal grandparents had discussed the change in placement with the children. The maternal grandparents moved for a hearing to establish their visitation rights,

arguing they should have weekend visitation as the paternal grandparents did previously. The court denied the request, noting:

It is extremely disappointing to again see [the maternal grandparents] attempt to manipulate, persuade and use these children as instruments in their self-created "contest" to have parity of visitation time. For whatever reason their actions and comments appear at least self-serving, if not vindictive, wholly ignoring the best interests of these children.

The maternal grandparents filed a request for clarification, which was denied. The maternal grandparents then filed an application for a review hearing prior to the next regularly scheduled hearing in February 2006, stating they believed the children were having extreme difficulty in their current placement. That request was also denied. In preparation for the February 2006 hearing, the maternal grandparents filed several motions, seeking (1) psychological and psychiatric evaluations of the children, (2) the return of the children to their care, and (3) a separate attorney appointed for the children, in addition to the guardian ad litem.

At the hearing on February 2, 2006, the juvenile court sua sponte raised the issue of standing, noting that the maternal grandparents were no longer the legal guardians of the children, and were no longer necessary parties under section 232.88 (2005).¹ The court determined that without formal intervention, the maternal grandparents lacked standing, and the court could not consider their motions. The maternal grandparents then orally filed a motion to intervene, and the court set that matter for a hearing in March 2006.

¹ Section 232.88, which provides for notice in CINA cases, incorporates the notice provisions for juvenile delinquency proceedings found in section 232.37.

In a separate order dated February 2, the juvenile court ruled, “[t]hat these children shall be allowed to have regular on-going contact with their maternal grandparents . . . either supervised or unsupervised as the Department directs.” The court denied the maternal grandparents’ motion to reconsider the review order. On February 17, 2006, they filed a notice of appeal of the review order and the order finding they had no standing.

In the meantime, on February 14, 2006, the maternal grandparents filed a new motion for visitation rights, requesting a hearing. On February 21, 2006, the juvenile court entered an order stating that it believed the Department had authorized visitation between the maternal grandparents and the children, but if it had not, then reasonable visitation was authorized. The court denied the request for a hearing. The maternal grandparents filed a new notice of appeal regarding the February 21 order. The appeals of the February 2 order and the February 21 order are now consolidated for our review.

II. Standard of Review

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court’s factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Standing

A. The maternal grandparents first contend that the juvenile court acted improperly in raising the issue of standing on its own motion. They claim that because none of the other parties objected to their continued involvement in

the case, the issue of standing should not have been raised. It is clear, however, that a court may raise the issue of standing sua sponte. See *Rieff v. Evans*, 630 N.W.2d 278, 285 (Iowa 2001). We find the juvenile court correctly questioned whether the maternal grandparents continued to have standing when they were no longer the legal guardians of the children.

B. The maternal grandparents point out that they were the children's legal guardians when the CINA case was initiated, and were then considered to be necessary parties. See Iowa Code § 232.37(2) (providing notice "shall be served upon the known parents, guardians or legal custodians");² § 232.91(1) ("Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child's parent, guardian, custodian, or guardian ad litem . . ."). They assert that they were already parties in the case, and their status should not be considered to have changed, even though they were removed as guardians in August 2005.

It is clear that the maternal grandparents were necessary parties solely because of their status as legal guardians, and not due to their status as grandparents. See *In re J.R.*, 315 N.W.2d 750, 752 (Iowa 1982). Once the maternal grandparents were no longer legal guardians, they were no longer within the list of those persons necessary for to the CINA proceedings. Iowa Code § 232.91(1). See also *In re Adoption of K.T.*, 497 N.W.2d 163, 165 (Iowa Ct. App. 1992) (finding grandparents who were not guardians or custodians were not entitled to notice of an adoption). Their standing within the case changed.

² The notice provision for CINA cases, section 232.88, incorporates the notice provisions for juvenile delinquency proceedings found in section 232.37.

As grandparents, the maternal grandparents had the ability to intervene in the case. See *In re A.G.*, 558 N.W.2d 400, 405 (Iowa 1997); *J.R.*, 315 N.W.2d at 752. In the absence of intervention, however, they would not automatically be considered parties to the juvenile court proceedings involving their grandchildren. The juvenile court properly determined the maternal grandparents would be required to intervene in order to continue their presence in the case.

C. The maternal grandparents have raised some arguments to support a claim that they should be permitted to intervene. This issue is not before us on appeal. The order appealed from merely set the issue of intervention for a hearing. We make no findings regarding whether the maternal grandparents should be permitted to intervene.

The maternal grandparents have also raised due process and equal protection issues which were not addressed by the juvenile court. These issues have not been preserved for our review, and we do not consider them. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting that an issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions).

IV. Visitation

In their appeal of the February 21, 2006, order, the maternal grandparents assert they are entitled to a hearing on their application for visitation. The juvenile court in a CINA proceeding has authority to grant grandparent visitation. See *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995). The court denied the request for a hearing. The court ruled:

The Court understands that the Department has authorized visitation between these children and their grandparents, David and Kelly If not, the Department shall authorize reasonable visitation between these children and these grandparents as the Department sees appropriate in the exercise of its discretion.

Based on our conclusions above, absent intervention in the case, the maternal grandparents did not have standing to request a hearing on visitation. At the time the maternal grandparents filed the motion being appealed, the juvenile court had ruled they had no standing in the case because they were no longer legal guardians, and we have affirmed that ruling. The motion to intervene by the maternal grandparents was still pending before the court. We conclude the juvenile court properly denied the maternal grandparent's request for a hearing on their motion regarding visitation.³

We affirm the rulings of the juvenile court in both appeals.

AFFIRMED.

³ Because the maternal grandparents did not have standing to file a request for visitation, the juvenile court did not have jurisdiction to rule on the issue. The court, however, in the rulings on visitation on February 2 and February 21, 2006, merely reiterated its previous ruling of August 2005, that visitation by the maternal grandparents would be at the discretion of the Department. The August 2005 juvenile court ruling was affirmed in a previous appeal. See *In re C.S.*, No. 05-1380 (Iowa Ct. App. Nov. 9, 2005).