IN THE COURT OF APPEALS OF IOWA

No. 7-167 / 06-1895
Filed March 28, 2007

IN THE INTEREST OF P.E.M., JR., A.M.M., R.J., and C.R.F.H. a/k/a CR.F.H.,
Minor Children,

H.T., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A mother appeals from a juvenile court order terminating her parental rights to three children. **AFFIRMED.**

Peter M. Monzel, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and David A. Dawson and Dewey P. Sloan, Assistant County Attorneys, for appellee.

Randy Hisey, South Sioux City, for father.

Joseph Kertels, Juvenile Law Center, Sioux City, guardian ad litem and attorney for minor children.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

H.T. is the mother of eleven-year-old R.J., six-year-old A.M., and two-year-old P.M., Jr. (the children).[1] H.T. appeals from a November 2006 juvenile court order terminating her parental rights to the children.[2] We affirm the juvenile court.

> We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

H.T. first claims the juvenile court erred in finding that reasonable efforts had been made toward reunification. More specifically, however, she argues that family members were available as placements for a guardianship or long-term foster care, and these options were not explored or considered. For two separate and independent reasons as to each such potential placement, we find H.T. entitled to no relief on this issue.

Contrary to the requirements of the Iowa Rules of Appellate Procedure applicable to appeals from termination of parental rights, H.T. has cited no authority in support of this issue. *See* Iowa Rs. App. P. 6.6(4) (appellant must file

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[1] H.T. is also the mother of a fifteen-year-old daughter, C.F.H., and a twenty-four-year-old son, J.S.H.

[2] The hearing resulting in termination of H.T.'s parental rights was a combined child in need of assistance (CINA) permanency review hearing and a termination of parental rights hearing. The resulting order in part continued C.F.H. in the custody of the Iowa Department of Human Services (DHS) for placement in another planned permanent living arrangement, and no one appeals from that part of the order. The order also terminated the parental rights of R.J.'s father and the parental rights of A.M.'s and P.M., Jr.'s father, and neither appeals.

a petition on appeal in conformance with rule 6.151), 6.151(2)(*e*) ("The petition should include supporting statutes, case law, and other legal authority for each issue raised . . . ."), 6.751 ("The supreme court may by order prescribe rules for use under the rules of appellate procedure."), 6.751-Form 4: Petition on Appeal (requiring, in part, "Supporting legal authority for [each issue]"). We deem this issue waived as to each suggested potential placement. *See* Iowa R. App. P. 6.14(1)(*d*) (failure to cite authority in support of an issue may be deemed waiver of that issue).

H.T. suggests three relatives as possible placements, her twenty-four-year-old son J.S.H., a maternal aunt, and a paternal aunt.[3]

J.S.H. was considered by the DHS, a "kinship care home study" was conducted, and a recommendation against placement with him resulted. The study revealed that J.S.H. was single, in the Air Force as a career, and living in dormitory housing on an Air Force base. After the study was essentially completed, a contact with J.S.H.'s supervisor revealed that J.S.H. was scheduled to be deployed overseas a few months later, to Qatar for three to six months, a fact J.S.H. had not revealed to the persons conducting the study. Based on these facts the juvenile court found that J.S.H. would be unavailable to care for the children for the foreseeable future and declined to consider placement with him at that time, but stated that such a placement could be explored again upon his return from military duty overseas. Even if H.T. had not waived this issue, upon our de novo review we concur with the juvenile court as to placement with J.S.H.

[3] H.T. has never been married to any of the four fathers of her five children, and does not suggest which father's sister the paternal aunt is.

As argued by the State, it does not appear that either of the two aunts named by H.T. in her petition upon appeal were ever presented to the juvenile court for consideration as a possible placement. The juvenile court therefore did not consider or pass upon either as a potential placement. Further, H.T. filed no motion seeking enlargement or amendment of the court's findings or conclusions or modification of its judgment. We agree with the State that H.T. has not preserved error with respect to possible placement with the aunts. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal."); *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993) ("Matters not raised in the trial court, including constitutional questions, cannot be asserted for the first time on appeal."); *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (a post-ruling motion is essential to the preservation of error when a trial court does not resolve an issue); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984) (same).

H.T. also claims the juvenile court erred "in denying the Oglala Sioux Tribe's Motion to Transfer Jurisdiction and the request of the ICWA Social Worker to appear telephonically at the termination hearing."[4] For the three

[4] Each of the children is an "Indian child" in that each is a member of or eligible for membership in the Oglala Sioux Tribe. The juvenile court correctly concluded that the Iowa Indian Child Welfare Act, Iowa Code chapter 232B (2005) and the Federal Indian Child Welfare Act, 25 U.S.C. § 1900 et. seq., apply. As it also further correctly concluded, under 25 U.S.C. section 1912(f) and Iowa Code section 232B.6(6)(a) no termination of parental rights over an Indian child can be ordered absent a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

following separate and independent reasons we find H.T. entitled to no relief on this issue.

First, H.T. has cited no authority in support of this issue. We therefore deem it waived. *See* Iowa R. App. P. 6.14(1)(*d*).

Second, we agree with the State that H.T. lacks standing to challenge the denial of the motion and the request made by the Tribe.[5] Standing to sue requires that a party "(1) have a specific, personal, and legal interest in the litigation and (2) be injuriously affected." *Birkhofer ex rel. Johannsen v. Brammeier*, 610 N.W.2d 844, 847 (Iowa 2000). It would seem that by analogy standing to complain about the denial of another party's motions or requests would require that the complaining party (1) have a specific, personal, and legal interest in the motion or request, and (2) be injuriously affected by the denial of such a motion or request. It is worth noting that although in the juvenile court H.T. stated she had no objection to the Tribe's ICWA social worker appearing telephonically, she did not join in that request. Nor did H.T. join in, support, or take any position concerning the Tribe's motion to transfer jurisdiction.

The Iowa Supreme Court has adopted the third-party standing rule applied by federal courts: when a person seeks standing to advance the constitutional rights of others, we ask two questions: first, has the litigant suffered some injury-in-fact, adequate to satisfy Article III's case or controversy requirements, and second, do prudential considerations point to permitting the litigant to advance the claim? *Lewis v. Iowa Dist. Ct.*, 555 N.W.2d 216, 218-19 (Iowa 1996).

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[5] By an April 14, 2006 order the juvenile court made the Tribe an intervenor in the CINA proceedings. The Tribe was given notice by registered mail of the termination proceeding.

Although H.T.'s challenge to the juvenile court's ruling on the motion and request in question do not appear to involve a party's constitutional rights, the same general approach would seem appropriate. Three prudential considerations apply in cases of third-party standing: the relationship of the litigant to the person whose rights are being asserted; the ability of the person to advance the person's own rights; and the impact of the litigation on third-party interests. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624 n.3, 109 S. Ct. 2646, 2651 n.3, 105 L. Ed. 2d 528, 540 n.3 (1989) (cited in *Lewis*, 555 N.W.2d at 219). In our context the third consideration would seem to be the impact on third-party interests of the juvenile court's decision on the motion and request. The Supreme Court has held that even where the relationship of the litigant to the person whose rights the litigant is asserting is close, reasons for requiring that person to assert their own rights will generally apply, absent "some genuine obstacle to such assertion." *Singleton v. Wulff*, 428 U.S. 106, 116, 97 S. Ct. 2868, 2875 49 L. Ed. 2d 826, 834 (1976).

Here the record presented on appeal does not affirmatively disclose any close relationship between H.T. and the Tribe.[6] Nothing in the record suggests that the Tribe, which has not appealed, or the children, who have not appealed, face some obstacle that prevented them from appealing or that they were for some other reason unable to advance their own rights by appealing. The challenged juvenile court rulings do not appear to impact persons other than H.T., the Tribe, and the children. After full consideration of the relevant

[6] An August 11, 2005 order in the underlying CINA cases finds that H.T. is a member of the Rosebud Sioux Tribe.

prudential considerations we conclude H.T. does not have standing to assert the rights of the Tribe.

Third, the record fully supports the juvenile court's decisions on the Tribe's motion and request. The most recent CINA cases involving the children[7] began in July 2005. In that same month the Tribe was given and received notice of the pendency of the CINA cases. The Tribe did not thereafter appear at or participate in the adjudication hearings, the disposition hearings, a shelter care hearing concerning C.F.H., review hearings, or permanency hearings. The termination case was filed August 31, 2006, and notice, including notice of a scheduled pretrial conference and an October 24 termination hearing, was sent to the Tribe. Although the Tribe filed a motion to transfer jurisdiction on September 7, it did nothing to have the motion heard and decided before the October 24 termination hearing. The Tribe did not respond to the State's discovery requests, which included a request for admissions. The Tribe made no advance request to participate telephonically in the October 24 hearing. Instead, the Tribe's ICWA social worker called and made the request at the time the hearing was being held.

H.T. has not cited, and we have not found, authority that would, absent agreement of the parties and the court, allow a party to participate in a termination hearing or any other trial by telephone. The State and the guardian ad litem and attorney for the children resisted the Tribe's motion to transfer jurisdiction and the request to participate in the permanency/termination hearing

[7] In earlier CINA cases R.J., A.M., and C.F.H. were removed from H.T.'s custody in September 2002, adjudicated CINA, and eventually returned to H.T. in September 2003. Those CINA cases continued until dismissed in September 2004, after two years of services.

telephonically. The juvenile court noted that the Tribe had not appeared at or participated in any prior hearings concerning the children, either personally, through counsel, or telephonically. It noted that there had been no written request to appear telephonically at the October 24 hearing, no attorney had entered an appearance on behalf of the Tribe, no arrangements had been made to have a representative of the Tribe appear at the hearing, and the Tribe had not prosecuted its motion to transfer jurisdiction. The court found it would not be in the best interests of the children to delay the proceedings further.

The juvenile court's findings concerning the Tribe's lack of participation in the CINA cases, and its minimal and belated participation or attempt to participate in the termination case, are fully supported by the record and we agree with and adopt them as our own. As noted above, R.J. and A.M. had been removed from H.T. from September 2002 to September 2003 during CINA cases that lasted over two years. During the present cases R.J., A.M., and P.M., Jr., who was only two and one-half years old, had been removed for one and one-half years. We find that under the facts and circumstances of these cases it would not be in the best interests of the children to delay these proceedings further, and it would in fact also clearly be contrary to their interests. We find no abuse of discretion or other error in the juvenile court's denial of the motion to transfer jurisdiction and the request to appear telephonically, decisions with which we fully agree.

AFFIRMED.