

IN THE COURT OF APPEALS OF IOWA

No. 7-823 / 06-1286
Filed January 16, 2008

**IN THE MATTER OF THE
GUARDIANSHIP OF J.N.**

S.N., a/k/a S.M.,
Applicant-Appellant.

Appeal from the Iowa District Court for Linn County, Larry J. Conmey,
Judge.

Applicant appeals the district court's ruling that she did not have standing
to seek visitation with an adult ward in this guardianship proceeding.

AFFIRMED.

Kenneth F. Dolezal, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Gretchen Witte Kraemer,
Assistant Attorney General, for appellee Iowa Department of Human Services.

Pamela Jo Lewis, Binder Law Office, Mount Vernon, guardian ad litem
and attorney for the ward.

Considered by Miller, P.J., and Eisenhauer, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.**I. Background Facts & Proceedings**

Shirlean is the biological mother of Jamie, who was born in 1985. In 1990, Shirlean's parental rights were terminated. Jamie was placed in the legal custody and guardianship of his father, Herman. Beginning in 1994, Jamie was hospitalized for mental health and behavioral problems.

Shortly before Jamie turned eighteen years old, Herman filed a petition seeking to establish a guardianship for Jamie. Pamela Lewis was appointed guardian ad litem (GAL) for Jamie. The district court appointed Herman guardian for Jamie under Iowa Code section 633.556(1) (2003). Herman unexpectedly died in 2004, and Calleen, his former wife, was appointed as Jamie's guardian.

On January 30, 2006, Shirlean filed an application for visitation with Jamie. The GAL responded that she did not believe Shirlean had standing to request visitation.¹ Shirlean filed subpoenas directed to Jamie and employees of a State resource center where he resided. The district court quashed the subpoenas based on motions by the State and the GAL.

After a hearing the district court ruled Shirlean did not have standing. The court stated:

Simply put, there is no portion of Iowa Code Chapter 633 that provides a statutory basis for Shirlean's (who has no legal relationship to Jamie) standing to file an application for visitation within this guardianship action. Shirlean does not have standing to pursue an application for visitation within these proceedings.

¹ In addition, the GAL filed a report stating she did not recommend contact between Shirlean and Jamie. The GAL stated Jamie's therapist was adamant it would not be in his best interests for Shirlean to have any contact with him. The GAL also reported Jamie's condition was not stable and further contact by Shirlean could easily aggravate his antisocial behavior.

The court noted that visitation with a resident of a State resource center must be approved by the resident's treatment team social worker designee. See Iowa Admin. Code r. 441-30.1(218)(2). Thus, the court held the present guardianship proceeding was not appropriate for seeking visitation. Shirlean appealed the decision of the district court, claiming error in denying her standing, quashing her subpoenas and failing to appoint separate counsel for Jamie.

II. Standard of Review

This case was tried as an equitable proceeding under Iowa Code section 633.33 (2005). In equitable proceedings our review is de novo. Iowa R. App. P. 6.4.

III. Standing

The term "standing" has been defined to mean that a party must have a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. *Berent v. City of Iowa City*, 738 N.W.2d 193, 202 (Iowa 2007); *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). A party must (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). Both of these requirements must be satisfied. *Citizens for Responsible Choices*, 686 N.W.2d at 475.

Shirlean's parental rights to Jamie were terminated in 1990. Under section 232.2(56), termination of the parent-child relationship means "the divestment by the court of the parent's and child's privileges, duties and powers with respect to each other." See *In re K.A.*, 516 N.W.2d 35, 38 (Iowa Ct. App.

1994). Furthermore, the term “parent” does not include a “mother or father whose parental rights have been terminated.” Iowa Code § 232.2(39). Under Iowa law Shirlean is no longer recognized as a parent of Jamie. See *Burgmaier v. Iowa Dep’t of Human Servs.*, 570 N.W.2d 109, 111 (Iowa 1997).

In the case *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993), a mother sought visitation with her children after her parental rights were terminated. We determined, “The general scheme of our statutes regarding termination of parental rights compels us to conclude the termination of one’s parental rights causes the immediate cessation of any legal right the parent may have had to visitation.” *J.P.*, 499 N.W.2d at 339-40. We concluded the mother had no enforceable right to visitation after her parental rights were terminated. *Id.* at 340.

“Once a court determines the requirements are met to support termination, our legislature has chosen not to allow a parent to have enforceable rights.” *Burgmaier*, 570 N.W.2d at 111 (quoting *J.P.*, 499 N.W.2d at 340). We conclude Shirlean does not have any legally enforceable right to seek visitation with Jamie. Because she does not have a legal interest in the litigation she lacks standing. See *Birkhofer*, 610 N.W.2d at 847 (finding a party that does not have a legal interest in litigation does not have standing).

Shirlean claims that under section 633.552 “any person” may petition for the appointment of a guardian, and this means “any person” could file an application for visitation with a ward. She asserts she does not need a separate legal relationship with Jamie in order to seek visitation with him. However, we

note the provisions for guardianships in the Iowa Probate Code do not include any statutory provision for a request for visitation with a ward. See Iowa Code §§ 633.551-.562. The fact “any person” may file a petition for the appointment of a guardian does not lead to the conclusion “any person” may seek visitation through the guardianship proceedings. We concur in the district court’s conclusion the present guardianship proceedings were not the proper proceedings for Shirlean to request visitation with the ward.

Because we have determined Shirlean does not have standing to bring this action, we do not need to address her claim the district court erred in quashing the subpoenas. Additionally, we are not required to address the issue of whether Lewis properly acted as GAL and attorney for the ward.

We affirm the decision of the district court that Shirlean lacked standing to pursue an application for visitation in the guardianship proceedings.

AFFIRMED.