

IN THE COURT OF APPEALS OF IOWA

No. 8-950 / 08-1080
Filed February 19, 2009

**IN THE INTEREST OF N.S.,
Minor Child,**

**L.C.M., Intervenor,
Appellant.**

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

L.C.M. appeals the juvenile court's decision denying her petition to intervene in an adoption proceeding. **AFFIRMED.**

Kristine M. Dreckman and David A. Morse of Rosenberg, Stowers & Morse, Des Moines, for appellant intervenor.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Robert Bozwell, County Attorney, for appellee State.

Julie DeVries of De Vries Law Office, L.L.C., Centerville, then Monte McCoy, Centerville, for appellee petitioners.

Kevin S. Maughan of Maughan Law Office, Albia, guardian ad litem for minor child.

Heard by Sackett, C.J., Potterfield, J., and Huitink, S.J.*

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

HUITINK, S.J.**I. Background Facts and Proceedings**

This case involves adoption proceedings for Nathan, who was born in 1998. Nathan was adjudicated to be a child in need of assistance (CINA) in 2006, and the juvenile court placed him in the care of the Teresa, who was the ex-wife of Nathan's father. In August 2006 Teresa permitted Nathan to live with a family friend, Linda. Linda "knew the Department was involved in Nathan's life, but she didn't tell anyone Nathan had been placed with her because she didn't want Nathan taken away from her."¹ In March 2007, when the Department discovered Linda had actually been caring for Nathan much of the time, Nathan was removed from the care of Teresa and Linda. Nathan was placed in foster care with Bryan and Amber on March 23, 2007.

The juvenile court terminated the parental rights of Nathan's parents on April 12, 2007.² At the termination hearing Nathan's father asked that Nathan be placed in the care of Linda until he was released from prison. The juvenile court denied this request, placing Nathan in the guardianship and custody of the Department. The court noted, "Given Nathan's stability in his current placement, and the fact that Nathan, when freed for adoption, would be eligible for adoption by any appropriate person, including [Linda], it would not be appropriate to move Nathan again"

¹This finding was made in the juvenile court order terminating the parental rights of Nathan's parents.

²The decision of the juvenile court was affirmed on appeal. See *In re N.S.*, No. 07-0759 (Iowa Ct. App. August 8, 2007).

After the termination, Linda filed a petition to intervene in the CINA proceedings, and filed an application for guardianship of Nathan. The juvenile court denied the petition to intervene. Linda appealed from the juvenile court's decision. The Iowa Supreme Court issued an order on January 25, 2008, denying Linda's request to stay the CINA proceedings.

On appeal, we reversed the decision of the juvenile court, finding that Linda "established a family relationship" with Nathan and he regarded her as a grandmother figure. We concluded that under Iowa Code section 232.117(3)(c) (2007), Linda was "suitable person" to assume guardianship of the child, and she had an interest in the case. We concluded Linda should be permitted to intervene in the CINA proceedings, and the case was remanded. *In re N.S.*, No. 08-0035 (Iowa Ct. App. May 14, 2008).

While Linda's appeal was pending, Bryan and Amber initiated separate proceedings on April 10, 2008, seeking to adopt Nathan under chapter 600. The Department and the guardian ad litem consented to the adoption. After our decision in No. 08-0035 was filed on May 14, 2008, Linda filed another motion to stay the CINA proceedings, and her request was denied by the Iowa Supreme Court. On May 21, 2008, Linda filed a petition to intervene in the adoption proceedings, pointing out that she had been permitted to intervene in the CINA proceedings.

A hearing on Linda's petition to intervene was held on May 22, 2008. At that time, the State had filed an application for further review by the Iowa Supreme Court of the decision by the Iowa Court of Appeals in No. 08-0035, and

procedendo had not yet issued in that case. The juvenile court denied the request to intervene, finding:

The record shows that if the Petition for Intervention were granted [Linda] would request that the Court reset the adoption proceeding in order that she could present evidence on why she is a more appropriate placement for Nathan than are the adoption petitioners. This would, as the Guardian ad Litem noted in his argument, delay the adoption and further postpone permanency for Nathan. Clearly, this would not be in Nathan's best interests. He has been in foster or relative care since October 12, 2005, or almost three years. He deserves permanency, and given that his guardian, the Iowa Department of Human Services, has acted diligently to find an appropriate, skilled, and qualified adoptive home there is no reason for this Court to interfere with that decision.

In a separate order, the court approved the adoption petition of Bryan and Amber. Linda appealed the juvenile court's decision denying her request to intervene. Her request to stay the adoption proceedings was denied by the Iowa Supreme Court.

II. Standard of Review

Our review of a motion to intervene is for the correction of errors at law. *In re H.N.B.*, 619 N.W.2d 340, 342 (Iowa 2000). "Although our review is on error, we accord some discretion to the district court." *Id.* The district court may exercise discretion in evaluating the sufficiency of the interest of the person seeking to intervene. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997).

III. Merits

Linda asserts the juvenile court erred by denying her petition to intervene in the adoption proceedings. She asserts that the previous court of appeals decision that she was a sufficiently interested person to intervene in the CINA proceedings shows she should have been permitted to intervene in the adoption

proceedings. Linda claims it would be in Nathan's best interests to permit her to intervene.

A person may intervene under Iowa Rule of Civil Procedure 1.407(1) when the person has "a legal right or liability that will be directly affected by the litigation."³ *H.N.B.*, 619 N.W.2d at 343. In considering a person's legal interest, we examine the source of the person's claimed right. *Id.* A person must have more than an indirect, speculative, or remote interest to intervene. *Id.* We consider statutory guidance in determining whether a person has a right to intervene. *Id.* Furthermore, intervention must be in the child's best interests. *Id.* at 344.

Our decision in No. 08-0035 that Linda could intervene in the CINA proceeding was based on section 232.117(3), which provides in relevant part:

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.

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). A person qualifying as a "suitable person" under section 232.117(3) has a legal right to be

³Iowa Rule of Civil Procedure 1.407(1), intervention of right, applies when there is a statutory unconditional right to intervene, or the person claims an interest in 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" Linda is claiming an interest in the adoption proceeding because she would like to assume guardianship of the child.

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.*

A person seeking to intervene in CINA proceedings as a “suitable person” must show a sufficient interest “in light of the nature of the proceeding and the surrounding facts and circumstances.” *H.N.B.*, 619 N.W.2d at 343. A critical factor to consider is the closeness of the relationship between the child and the person seeking to intervene. *Id.* at 344. In No. 08-0035 we concluded Linda had a sufficiently close relationship with Nathan to be considered a “suitable person” to seek guardianship of the child under section 232.117(3), and thus, she had the right to intervene in the CINA proceeding.

As noted above, we consider statutory guidance in determining whether a person has a sufficient legal interest in the proceedings to permit intervention. See *id.* at 343. The statutory provisions concerning who may be involved in adoption proceedings are very different than the statutory provision concerning who may be considered as a guardian for a child after termination of parental rights. Adoptions are creatures of statute, and the statutory procedures of chapter 600 must be followed for the issuance of a valid adoption decree. *In re Adoption of M.M.B.*, 376 N.W.2d 900, 901 (Iowa 1985).

Section 600.11 provides for notice of an adoption hearing. *Id.* The list of those entitled to notice of an adoption hearing is found in section 600.11(2), and includes a guardian, guardian ad litem, custodian, and “person in a parent-child relationship with the person to be adopted.” Section 600.12 provides, “Only those persons notified under section 600.11 and their witnesses and legal

counsel or persons requested by the juvenile court or court to be present shall be admitted to the court chambers while an adoption hearing is being conducted.” A person admitted to the hearing under section 600.12(2) is allowed to present evidence at the adoption hearing. Iowa Code § 600.12(3).

Those who are not specifically listed in section 600.11(2) are not entitled to notice of the adoption hearing, and therefore, do not have the ability to participate in the hearing. See *In re Adoption of B.B.M.*, 514 N.W.2d 425, 430 (Iowa 1994) (finding grandparents were not required to give consent to adoption, and therefore were not entitled to notice of adoption proceedings); *In re Adoption of K.T.*, 497 N.W.2d 163, 163 (Iowa Ct. App. 1992) (finding grandparents who were not custodians of child were not entitled to notice under section 600.11(2)). Furthermore, where a person does not have any legal rights in the proceedings, the person has been found not to have the right to intervene in the proceedings. *Adoption of B.B.M.*, 514 N.W.2d at 430. A party’s “mere interest or desire to adopt a child will not qualify as a sufficient interest.” *H.N.B.*, 619 N.W.2d at 343.

We additionally note that a juvenile court should be reluctant to grant a petition to intervene “if it will delay a child’s adoption and/or chance for permanency.” *In re E.G.*, 738 N.W.2d 653, 656 (Iowa Ct. App. 2007). In considering a petition to intervene in an adoption proceeding, a court should seek to avoid delay and disruption of the adoption process. See *Adoption of B.B.M.*, 514 N.W.2d at 429. In all instances, “intervention must be compatible with the child’s best interests.” *H.N.G.*, 619 N.W.2d at 344.

We conclude the district court did not err in denying Linda’s petition to intervene in the adoption proceedings. Although Linda was a “suitable person” to

be considered for guardianship of the child under section 232.117(3), and could intervene in the CINA proceeding, she had no legal interest in the adoption proceeding under the statutory provisions of chapter 600, and therefore did not have a sufficient interest in the proceedings to intervene. Furthermore, as the juvenile court pointed out, to permit Linda to intervene at this point would delay the adoption process, and this would not be in the child's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.