

IN THE COURT OF APPEALS OF IOWA

No. 8-962 / 08-1598
Filed December 31, 2008

**IN THE INTEREST OF T.W.,
Minor Child,**

**J.S. and C.S., Intervenors,
Appellants.**

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

Foster parents appeal from an order, which was entered without notice to
them, placing guardianship and legal custody of the child with maternal great-
grandparents. **REVERSED AND REMANDED.**

Amanda Demichelis of Demichelis Law Firm, Chariton, for appellants
foster parents/intervenors.

James Underwood, Centerville, for mother.

Jonathan Willier, Centerville, for father.

Ryan Mitchell, Ottumwa, for appellees grandparents/intervenors.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Steve Goodlow, County Attorney, for State.

Kevin Maughan, Albia, for minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

The foster parents appeal from a September 22, 2008 order, which was entered without notice to them, terminating the Iowa Department of Human Services as T.W.'s guardian and placing guardianship and legal custody of T.W. with the maternal great-grandparents. The great-grandparents have moved to dismiss the appeal, contending the foster parents, having never petitioned to become parties to the proceedings, have no legal right to appeal. The motion to dismiss was ordered deemed submitted with the appeal. We overrule the motion to dismiss and reverse and remand for further proceedings.

I. Background Facts and Proceedings.

The appellants are the foster parents of T.W., who was placed in their care in November 2006. T.W.'s parents' rights were terminated on March 31, 2008. In the order terminating parental rights, legal custody and guardianship of T.W. was placed with the Iowa Department of Human Services (Department). At the time of termination, the court noted that both the foster parents and the maternal great-grandparents had expressed interest in adopting T.W.:

Whether . . . permanency is eventually with the foster parents, a relative, or some other suitable party, it is a safe, permanent home that will be most important for [T.W.] Given the record before the Court at this time, the department is best equipped to make the decision of who would be appropriate to adopt [T.W.].

The court ordered the Department to submit a case permanency plan to the court and to "make every effort to establish a stable placement for the child in interest by adoption or other permanent placement."

An August 1, 2008 report was prepared by the Department for the permanency review hearing, which was to be held August 11, 2008, "and to

update the plan for transfer to the adoption unit.” In that report caseworker Joey Popson writes:

[T.W.] has a strong bond with his current foster parents. [T.W.] sees [C.S.] and [J.S.] as his mother and father as these are the only parents that he has known since three months of age. [C.S.] and [J.S.] are excellent care takers of [T.W.] and are very attentive to his needs.

[T.W.] has visits with his former great-grand parents . . . who intervened in court proceedings. They have had visits with [T.W.] since October 2007. These visits began as supervised by Vikki Brunk the FSRP provider and are currently 2 hours, 2 nights a week and 6 hours 2 Sundays a month. Vikki reported that at the visits the interaction with [T.W.] was appropriate and that [T.W.] was affectionate with [them]. The visits were not stopped after the termination occurred and continue at this time. The Guardian Ad Litem reported that he wanted visits to continue since they were a possible adoptive party.

. . . .
At the Foster Care Review Board that was held on May 6, 2008, the Board related that they support the placement of T.W. with [the foster] family.

Under “Concurrent Goals” is written: “The child is currently placed in foster care, a preadoptive home, and the foster parents are willing to adopt. . . . Great-grandparents have intervened to attempt to adopt T.W.” The report was filed September 11, 2008.

The August 11, 2008 permanency review hearing was reset on the State’s motion. No notice was sent to the foster parents.

We are unable to determine if notice was sent to the foster parents with regard to the great-grandparents’ motion to remove the Department as guardian and their request to be appointed the child’s guardians.

On September 22, 2008, a hearing was held on the great-grandparents’ motion to remove the Department as guardian and request to be appointed the

child's guardians. The foster parents were not present. The Department appeared and took no position. The guardian ad litem reported:

Your honor, I have observed this child in the [great-grandparents'] home and I have observed the child in foster care. And it's taken some time here since termination for the case to get transferred to an adoption worker, and I think that permanency needs to be established for this child.

And I think really what turns my opinion here is the long-term best interests of this child. Again, I believe he's received good care in the foster home and that he would continue to receive good care in the foster home.

However, I believe that in order – the advantages of having him placed with the [great-grandparents] would be that he would be able to continue with the family identity and in a family relationship, as well as I believe the [great-grandparents] have the financial means to provide well for this child and the physical means to provide well for this child.

Counsel for the great-grandparents stated agreement with the guardian ad litem.

A one-and-one-half-page report of the great-grandparents' home prepared by a foster/adoptive care worker was presented to the court.

The court then ruled from the bench:

Based on the record made today, my review of the case permanency plan that was filed on August 7th, and in particular the record that was previously made at the termination of parental rights hearing . . . and record made today, that the Department takes no position with respect to the Movants' request for the department to be removed as guardian of the child, thereby not resisting that motion; and the record by the guardian ad litem supporting the motion by the [great-grandparents], I will enter an order today that grants the motion for the Department to be removed as guardian and custodian of the child.

And I will enter an order that places guardianship, custody of the child with . . . the child's great grandparents.

I won't set a further hearing to review this proceeding. There is already an adoption proceeding that has been commenced by the [great-grandparents] with respect to this child, and I would just ask that the [counsel] for the [great-grandparents] prepare and submit an order to the Court to have the matter reset for hearing so that that matter can be addressed and the adoption scheduled.

A written ruling was filed on September 24, 2008. The court writes: “This was not a contested proceeding.” The court noted that “as of the date of the filing of the case plan on September 11, 2008 the case had not yet been transferred to the adoption worker.” A copy of the order terminating the Department as guardian and placing guardianship and legal custody with the great-grandparents was sent to the foster parents.

The foster parents filed this appeal.

II. Discussion.

Iowa Code section 232.88 (2007) provides, in part:

After a [child in need of assistance] petition has been filed, the court shall issue and serve summons, subpoenas, and other process in the same manner as for adjudicatory hearings . . . as provided in section 232.37. Reasonable notice shall be provided to the persons required to be provided notice under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. *In addition, reasonable notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent, relative, or other individual providing preadoptive care, with whom the child has been placed.*

(Emphasis added.)

Section 232.88 governs “judicial proceedings” under “Division III Child in Need of Assistance Proceedings.” The statutory provision is unambiguous: “reasonable notice for any hearing under this division . . . shall be provided to . . . a foster parent.” *Id.* The provision does not state that notice need only be given to foster parents who have become parties.¹

¹ Although Iowa Code section 232.91(2) permits a foster parent to petition to be made a party, this does not negate the notice requirement of section 232.88.

The September 22, 2008 hearing was to be a permanency review hearing—a matter under Division III. See Iowa Code § 232.104 (entitled “permanency hearing”). It is undisputed that the foster parents, J.S. and C.S., were not given notice of that September 22, 2008 hearing.

The result is the same if we consider the matter as being governed by Division IV, which provides for removal of a guardian (a proceeding governed by section 232.118). Division IV similarly requires notice to the foster parents.

In addition to the persons who are necessary parties who may be parties under section 232.111, *notice for any hearing under this division shall be provided to the child’s foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.*

Iowa Code § 232.112 (emphasis added).

The September 22 hearing resulted in T.W. being removed from the preadoptive care and custody of the foster parents without affording them a chance to be heard. This was contrary to their rights under section 232.91(3): “Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child.”

We believe the foster parents fit within those authorized to appeal under Iowa Code section 232.133, which provides: “An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact.” Without the right to appeal, the notice requirements under section 232.88 and 232.112, and the right to be heard under section 232.91, would be entirely meaningless. We therefore deny the great-grandparents’ motion to dismiss this appeal.

We do not know whether the court would have ruled differently had the foster parents been given notice and the right to be heard. It was obviously aware that both the foster parents and the great-grandparents were interested in adopting T.W. at the time of the termination hearing. It is apparent, however, that at the time of the September 2008 hearing, the district court believed the matters before it were “uncontested.”

We conclude the district court’s ruling terminating the Department’s guardianship must be reversed and the matter remanded for further proceedings, with proper notice given to the foster parents.

REVERSED AND REMANDED.