

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1073 / 12-1846  
Filed January 9, 2013

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

**M.H. and J.H., Intervenors,  
Appellants.**

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

Grandparents, as intervenors, appeal the juvenile court's decision refusing to modify guardianship. **AFFIRMED.**

Jesse A. Macro, Jr., of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellants.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Jason Hauser of Hauser Law Office, P.C., Des Moines, for father.

Nicole Nolan of Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

Maternal grandparents, as intervenors, appeal from a juvenile court decision terminating the father's parental rights, and refusing to modify guardianship. The maternal grandparents contend the juvenile court erred when it did not modify placement of the child in their favor. The grandparents argue the juvenile court's refusal to modify placement is contrary to a relative placement preference and not in the child's best interest. We affirm.

**I. Background Facts & Proceedings**

B.S. was born in December 2007. For much of the child's early life, B.S. and both parents lived with the maternal grandparents. Meanwhile, the parents struggled with a severe addiction to the prescription drug oxycontin—a semi-synthetic opioid with a high potential for abuse.

In April 2010, with the parents' addiction spiraling out of control, the couple began to burglarize homes to support their habit. Later that same month, both parents were arrested and charged with burglary and theft. As a result, authorities removed the child from the parents' custody. In late April 2010, the child was adjudicated a child in need of assistance and the juvenile court placed the child with the maternal grandparents.

On January 25, 2011, the maternal grandparents filed an uncontested motion to intervene. The juvenile court granted the motion.

On April 7, 2011, the juvenile court held a permanency hearing. The court found the father had made substantial progress toward recovery, and placed legal custody and guardianship of B.S. with the father subject to Department of

Human Services (DHS) supervision, and subject to B.S. continuing to reside in the household of the maternal grandparents.

In early October 2011, the father tested positive for opiate use in violation of his probation. DHS temporarily removed B.S. from the father's care and thus from residing with the maternal grandparents, and placed B.S. with the child's paternal great aunt and uncle under a safety plan.

On October 10, 2011, the grandparents filed a motion to modify placement. On October 21, 2011, the court held a hearing on the grandparent's motion to modify. During the hearing, the State moved to modify the order that had placed custody and guardianship with father, and urged the court to place custody with the child's paternal great aunt and uncle. The juvenile court denied the grandparent's motion to modify, and granted the State's motion, placing the child with the paternal great aunt and uncle. The child remained in the care of the aunt and uncle throughout the pendency of the proceedings.

On October 27, 2011, the juvenile court terminated the mother's parental rights under Iowa Code section 232.116(1)(d) and (h) (2011). The court ordered DHS to act as guardian.<sup>1</sup> On December 5, 2011, the grandparents filed a motion to modify guardianship and a motion for a full evidentiary hearing on their October motion to modify placement.

The father's October 2011 probation violation ultimately resulted in revocation of his probation. He is currently serving a twenty-year prison

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<sup>1</sup> The court of appeals affirmed the decision on January 19, 2012.

sentence. The State filed a petition to terminate his parental rights on March 15, 2012.

On April 5, 2012, and May 8, 2012, the juvenile court held a joint hearing on the State's petition to terminate the father's parental rights and on the grandparents' motion to modify guardianship (and presumably on the grandparents' motion for full evidentiary hearing on the October motion to modify placement). During the hearing the father consented to termination. The State, DHS, and the child's guardian ad litem recommended the court place guardianship with DHS. On September 27, 2012, the juvenile court terminated the father's parental rights, and ordered DHS to continue to act as guardian. The grandparents now appeal.

## **II. Standard of Review**

We review juvenile proceedings de novo. *In re E.G.*, 738 N.W.2d 653, 654 (Iowa Ct. App. 2007). We give non-binding deference to the juvenile court's factual findings, and adjudicate rights anew. *Id.*

## **III. Analysis**

### **A. Preservation of Error**

The grandparents contend the juvenile court erred in modifying placement on October 21, 2011, and placing B.S. with the child's paternal great aunt and uncle. However, the grandparents did not appeal the juvenile court's October 21, 2011 order. Their December motion for full evidentiary hearing did nothing to preserve for appeal the court's October 21, 2011 denial of their motion to modify

placement. Thus, the principles of res judicata bar this claim. See *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997).

### **B. Motion to Modify Guardianship**

The only relief sought by the grandparents in this appeal is a modification of placement of B.S. with them. Although that issue may be barred as stated above, we will address it to the extent it is raised in the context of the guardianship decision made by the court after termination.

The grandparents assert a statutory preference for placement with them as relatives. Their argument has two frailties: the current placement with an aunt and an uncle would satisfy such a requirement if it existed, and no such requirement exists post-termination. When parental rights are terminated, Iowa Code section 232.117(3) provides several options for transfer of guardianship and custody. Section 232.117(3) provides,

If the court terminates 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.

Once the juvenile court finds clear and convincing evidence to terminate parental rights, there is no preference for placement between subsections (a) through (c). See *id.* § 232.117; *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992) ("There is no statutory preference for [post-termination placement with] a relative."). We find no post-termination preference for placing guardianship with the

grandparents over DHS, and cannot predicate error on the juvenile court's refusal to modify guardianship on these grounds. See *R.J.*, 495 N.W.2d at 117.

They make no other legal or factual argument relating to the motion to modify guardianship. Thus, they have waived any claim for relief arising out of the juvenile court's denial of their motion to modify guardianship. Iowa R. Civ. P. 6.903(2)(g)(3) (requiring "[a]n argument containing the appellant's contentions and reasons for them with citations to the authorities relied on and references to the pertinent parts of the record"); *Kragnes v. City of Des Moines*, 810 N.W.2d 492, 507 n.12 (Iowa 2012).

**AFFIRMED.**