IN THE COURT OF APPEALS OF IOWA

No. 6-939 / 06-1592
Filed December 13, 2006

IN THE INTEREST OF K.R.,
Minor child,

K.R., Guardian,
Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, District Associate Judge.

A former guardian appeals a juvenile court ruling denying her motion to intervene in pending child-in-need-of-assistance proceedings. **AFFIRMED.**

Mary McGee Light, Cedar Rapids, for appellant guardian.

Robert Davison, Cedar Rapids, for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Harold L. Denton, County Attorney, and Lance Heeren, Assistant County Attorney, for appellee State.

Elizabeth Jacobi, Cedar Rapids, for minor child.

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

VAITHESWARAN, J.

Kathey, a former guardian of K.R., appeals a juvenile court ruling denying her motion to intervene in pending child-in-need-of-assistance proceedings and her related motion for visitation with the child. Kathey concedes that the juvenile court transferred custody of K.R. to the Department of Human Services because of her "parenting and criminal history and propensity toward dishonesty" and she concedes our court affirmed this disposition. She further acknowledges that, in concurrent proceedings, the district court terminated her guardianship over the child. Finally, she admits that she is no longer a necessary party to the child-in-need-of assistance proceedings.

Notwithstanding these concessions, Kathey asserts her bond with the child makes her an "interested party" who should have been allowed to intervene in those proceedings. The juvenile court rejected this argument, stating:

> [Kathey] had the opportunity to provide a home for this child. She failed miserably. There is no reasonable prospect that she would ever be considered a custodian of this child during the pendency of this Child in Need of Assistance action. This case is quickly moving toward permanency by way of termination and adoption. Her continued presence in this case is of no benefit to the child as the Department makes plans to transition the child into a permanent placement.

The juvenile court also denied Kathey's request for visitation with the child. The court acknowledged a "significant bond" between the former guardian and the child but noted that this bond could be severed, just as bonds between a parent and child could be severed.

Our review of this ruling is for errors of law, with "some deference" given to the district court's discretion. *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). In

conducting our review, we decline to consider the State's resistance to Kathey's appeal brief filed with the appellate courts because the State advised the juvenile court that it had no objection to the motion to intervene. We believe the State is bound by its position in that court.[1] *Cf. Winnebago Indus., Inc. v. Haverly*, ___ N.W.2d ___, ___ (Iowa 2006) (noting judicial estoppel may prevent a party from asserting inconsistent positions in the same action); *Duder v. Shanks*, 689 N.W.2d 214, 221 (Iowa 2004) (same).

Turning to the merits, we begin with Iowa Rule of Civil Procedure 4.107(1)(b), which states that a person shall be permitted to intervene in an action,

> when the applicant claims an interest relating to the property or transaction which is 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, unless the applicant's interest is adequately represented by existing parties.

A person has "an interest" where the person "has a legal right which will be directly affected" or "a legal liability which will be directly enlarged or diminished

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[1] The prosecutor stated:

> The State's position is that in light of the fact that [Kathey's] guardianship has been dissolved, she no longer has standing as a party, she would have to intervene. Given the standards that the courts follow in determining whether or not a person has sufficient interest to intervene, I don't know of any legal basis to which the State could resist or object to her intervention. Obviously, as indicated, [Kathey] has raised this child for the first two, two-and-a-half years of her life. The State can't deny that she was there for -- as an interested person in this child's life. I would just note that the Department and State would anticipate that the current permanency goal at some point in time will be changed to termination of parental rights, and that reunification of the child with [Kathey] is no longer the permanency goal that the Department or the State would recommend. But in light of [Kathey's] past interest in this child, the State does not know of any legal basis or grounds to resist or deny her request based on what we have seen in the case progress reports.

by the judgment or decree." *In re C.L.C.*, 479 N.W.2d 340, 343 (Iowa Ct. App. 1991).

As noted, Kathey essentially concedes she has no legal right that will be directly affected by the juvenile court action. She also does not have a legal liability that would be affected by the proceeding. Her suitability as a caretaker was previously adjudicated, with the juvenile court concluding that K.R. would continue "to be at risk of harm" in Kathey's care. *See In re H.N.B.*, 619 N.W.2d 340, 344 (Iowa 2000) ("The intervention must be compatible with the child's best interest."). Additionally, her guardianship rights were separately terminated, making it unnecessary for her to participate in the juvenile court proceedings in order to protect that interest. Finally, given these separate decisions, Kathey was in no position to argue that she would be a "suitable person" for placement of the child. *See* Iowa Code § 232.117(3) (2005). For all these reasons, we conclude the juvenile court did not err in denying Kathey's motion to intervene in the juvenile court proceedings, as well as her motion to exercise visitation with the child.

AFFIRMED.