IN THE COURT OF APPEALS OF IOWA

No. 9-399 / 09-0513
Filed June 17, 2009

IN THE INTEREST OF M.J.,
Minor Child,

D.B., Grandmother,
Appellant.

Appeal from the Iowa District Court for Ida County, Mary L. Timko, Associate Juvenile Judge.

Maternal grandmother appeals the termination of parental rights. **AFFIRMED.**

Lisa Mazurek, Cherokee, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Kristal L. Philips, County Attorney, and Meghann Cosgrove Whitmer, Assistant County Attorney, for appellee State.

Marchelle Denker of Sioux City Juvenile Office, Sioux City, for appellee minor child.

Peter Goldsmith of Boerner & Goldsmith Law Firm, P.C., Ida Grove, for mother.

Karla Henderson of Forristal & Henderson, Holstein, for father.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

M.J. was born in the state of Washington in October 2006. Her mother, father and maternal grandmother live there. Her father brought her to Iowa in December 2007 to escape arrest on a warrant pending in Washington. He voluntarily placed M.J. in foster care in June 2008 and returned to Washington. M.J.'s mother traveled to Iowa a few weeks before M.J. was removed, but returned to Washington after the CINA petition was filed. The parental rights of both M.J.'s parents were terminated pursuant to Iowa Code section 232.116(b) (2009) (abandonment). D.B., M.J.'s maternal grandmother, appeals the termination of parental rights. She also asserts the court erred in not placing the child in her care. We affirm.

Neither the mother nor the father appealed. However, the grandmother contends there was not clear and convincing evidence of abandonment and the State has not made reasonable efforts to reunify the child with her parents. She also contends the court erred in declining to place the child with her.

We review her claims de novo. *See In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

We are aware of no authority that suggests that a grandparent has standing to contest the termination of parental rights. Standing to sue requires that a party have a specific personal or legal interest in the litigation and be injuriously affected. *In re Marriage of Mitchell*, 531 N.W.2d 132, 133-34 (Iowa 1995) (holding that grandparents do not have standing to seek modification of a dissolution decree). We find the following passage from *Mitchell*, 531 N.W.2d at 133-34, instructive:

> "[T]he right of grandparents to custody of a child under a divorce decree is no different from that of any third person or stranger to the marriage." [*In re Marriage of*] *Smith*, 269 N.W.2d [406,] 408 [(Iowa 1978)]; *see also Olds v. Olds*, 356 N.W.2d 571, 572 (Iowa 1984) (at common law "grandparents had neither a right to custody nor visitation as against a parent"). *Cf. In re J.R.*, 315 N.W.2d 750, 752 (Iowa 1982) (paternal grandparents have right to intervene in termination proceeding because statute allows court to transfer custody of child to "relative or other suitable person"); *In re C.L.C.*, 479 N.W.2d 340, 343 (Iowa Ct. App. 1991) (nonrelatives allowed to intervene in termination proceeding because of same statute). Grandparents do not have a "specific, personal, and legal interest" in the dissolution proceeding that would grant them standing to petition for modification of the decree.
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> Finally, Lloyd and Karen argue that disallowing them to commence a modification action is "to ignore the purpose of the law which is to protect children." However, there are other forums in which they may pursue the children's protection. They might petition to become guardians of their grandchildren. *See* Iowa Code §§ 633.552-.562. They might also file a petition to find their grandchildren in need of assistance. *See* Iowa Code § 232.81. Children affected by a dissolution decree are not unprotected merely because strangers to the dissolution may not initiate modification proceedings.

The general principle is that in termination of parental rights proceedings each parent's parental rights are separate adjudications, both factually and legally. *See In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005). A grandparent cannot assert a parent's rights any more than one parent can assert the unique rights of the other. We conclude that D.B. has no standing to contest the termination of the parents' rights with respect to M.J. Consequently, the only issue before this court is whether the court erred in not placing M.J. with her maternal grandmother.

The ultimate goal of chapter 232 is to "best serve the child's welfare." Iowa Code § 232.1 (2009). Section 232.116(2) provides:

> In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the

> child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:
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> b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent . . . , whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child in to the foster family. . . .

M.J. was voluntarily placed in foster care in June 2008 and, at the time of the hearing, M.J. had been in foster care for eight months. She had not seen D.B. for more than a year. The juvenile court found:

> [I]t is in the best interest of [M.J.] that the parental rights . . . be terminated. Prior to her placement in foster care, [M.J.] was a "second thought" to her parents' way of life. They chose a path of self-destruction that negatively impacted [M.J.] She has been in Iowa for over half of her life. She is integrated into her current foster home. They are willing to permanently integrate her into their home. [M.J.] has a right to a sure, safe, drug-free environment with parents who will put her needs above their own selfish desires . . . .
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> Although the maternal grandmother, [D.B.], was allowed to intervene in this matter, intervention does not necessarily equal the right to be a placement option for a grandchild when parental rights have been terminated to the grandchild. Although [D.B.] has testified to her love of [M.J.] and her gifts and cards, there simply is not enough evidence presented to convince this court that [M.J.] should be uprooted and returned to the state of Washington to live with her. [M.J.]'s life is here, in Iowa, where her father abandoned her. She has grown and has had stability and has the highest promise of stability here. It is important that she be allowed to have the full opportunity afforded to her to establish and bond with a permanent, forever family.

D.B. argues that placement with a relative should be favored. "There is no statutory preference for a relative" following termination. *In re R.J.*, 495 N.W.2d 114, 119 (Iowa Ct. App. 1992). Following the termination of parental rights of the child's parents, Iowa Code section 232.117(3) requires the court to transfer

guardianship and custody of children to (1) the department of human services, (2) a facility licensed to receive and provide care for children, or (3) a parent who does not have physical care of the child, a relative, or other suitable person. "The paramount concern is the best interest of the children." *Id.*; *In re B.B.M.*, 514 N.W.2d 425, 429 (Iowa 1994) (noting that the prior termination of parental rights based on parental disqualification "substantially diminishe[d] the role of the grandparent-grandchild relationship"). The juvenile court concluded that M.J.'s best interests were served by the termination of the parental rights and M.J.'s continued placement in her preadoptive home, a setting where she has thrived. Upon our de novo review, we find no error.

AFFIRMED.