IN THE COURT OF APPEALS OF IOWA

No. 1-405 / 01-0214
Filed July 31, 2001

FILED
JUL 31 2001
CLERK SUPREME COURT

IN THE INTEREST OF

B.O.,
Minor Child,

L.O., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

Biological mother appeals the district court order dismissing her petition to vacate an earlier order which terminated her parental rights. **AFFIRMED.**

Joseph J. Hrvol, P.C., Council Bluffs, for appellant.

Craig M. Dreismeier of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellee.

Mark Rater, Council Bluffs, guardian ad litem for minor child.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

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VOGEL, P.J.

A mother appeals the decision of the juvenile court which denied her petition to vacate a 1997 order terminating her parental rights. She claims the termination order is void because she was a minor at the time and was not represented by a guardian ad litem. We affirm on appeal.

In May 1997, prior to the birth of her baby, Lindsay, who was then a minor, petitioned for termination of her parental rights under Iowa Code chapter 600A. Lindsay's mother, Jodie, also signed the petition as her legal guardian. Lindsay was represented by an attorney, Keith Engel. A guardian ad litem was appointed for the baby.

The child, Jonathon, was born in June 1997. After the child was born, Lindsay signed a written consent to termination of her rights. The juvenile court found:

> The Court finds that Lindsay [ ] has been advised and offered three hours of counseling concerning the termination of her parental rights and she has refused same. The Court further finds, based upon the maturity, credibility and testimony of Lindsay [ ] that she is fully aware and understands what she is doing and is fully aware and understands the consequences of the termination of her parental rights.

On August 14, 1997, the court terminated Lindsay's parental rights to her child. Jonathon's father, Bryan, who was also a minor, did not agree to termination of his parental rights. Bryan's parents subsequently became Jonathon's guardians.

On November 29, 1999, Lindsay filed a petition to vacate the 1997 order terminating her parental rights. She asserted she had not really wanted the termination, but had gone along with it to please her mother. She also asserted

that because she was a minor at the time of the termination, under section 600A.6(2) the court should have appointed a guardian ad litem for her. The juvenile court dismissed the petition to vacate on the ground it was untimely under Iowa Rule of Civil Procedure 253; it was not filed within one year after the termination order. Lindsay appeals.

I. SCOPE OF REVIEW

Our scope of review in termination cases is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). In the present case, however, the appeal is from the juvenile court's ruling on Lindsay's petition to vacate and we employ an abuse of discretion standard. *In re Adoption of B.J.H.*, 564 N.W.2d 387, 391 (Iowa 1997). The trial court enjoys wide discretion in deciding whether to vacate an order under rule 252. *Id.*

II. PETITION TO VACATE

Rule 253 requires a petition to vacate under 252 to be filed within one year of the action sought to be vacated. Iowa R. Civ. P. 253. A petitioner seeking relief under rule 252 bears the burden to follow the prescribed procedural steps of rule 253. *In re Marriage of Fairall,* 403 N.W.2d 785, 788 (Iowa 1987). Lindsay's petition to vacate, which was filed more than two years after the termination order, is untimely under rule 253. Because her petition to vacate was not timely filed, we do not have jurisdiction to consider it. *Id.* The juvenile court correctly dismissed Lindsay's petition to vacate as untimely.

III. VOID JUDGMENT

Lindsay also claims the termination judgment was void because she was a minor at the time and a guardian ad litem was not appointed to represent her. She claims section 600A.6(2) requires a guardian ad litem to be appointed for all minors in a termination proceeding under chapter 600A, whether the minor is the child or the parent in question.

We previously stated:

> While an application to set aside a voidable judgment must be filed within one year under rule 253, a judgment may be vacated at any time if it is void. A judgment may be considered void where a court acted without or in excess of its jurisdiction. A judgment is void where it is rendered in violation of due process of law. A void judgment is no judgment at all, and no rights are acquired by virtue of its entry of record.

Johnson v. Mitchell, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992) (citations omitted).

The relevant portion of section 600A.6(2) provides, "the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or if the interests of the guardian conflict with the interests of the child." "Guardian" does not mean a child's parent, but a person appointed by a court. Iowa Code § 600A.2(8). A "guardian ad litem" is a person appointed by the court to represent a child in a legal action. Iowa Code § 600A.2(9). If a guardian ad litem has not been appointed for a minor child under section 600A.6(2), the termination may be reversed. *See In re D.L.B.,* 345 N.W.2d 147, 148 (Iowa Ct. App. 1983).

We find Lindsay's arguments in this case are based on a confusion between her roles as parent and child. While Lindsay was a minor at the time of the termination proceeding, and a child of her parents, she was not the minor child as contemplated under section 600A.6(2). For purposes of the termination proceedings under chapter 600A, Lindsay was in the role of the parent, albeit a minor parent, and Jonathon was in the role of the minor child. Thus, where section 600A.6(2) requires the appointment of a guardian ad litem for the minor child, this does not refer to Lindsay but rather to Jonathan. We determine the 1997 termination order was not void on the ground no guardian ad litem had been appointed for Lindsay.

Furthermore, as noted above, a void judgment is one made in violation of due process of law. *See Johnson,* 489 N.W.2d at 414. Even if section 600A.6(2) did require the appointment of a guardian ad litem for a minor parent, a violation of the statute would not be considered a due process violation.[1] Failure to appoint a guardian ad litem for a minor parent would not render the judgment void.

We affirm the decision of the juvenile court.

AFFIRMED.

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[1] Due process requires "fundamental fairness" in judicial proceedings. *Lassiter v. Department of Social Servs.,* 452 U.S. 18, 25, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640, 648 (1981). There should be sufficient notice of the complaint against the parents and of the time of the hearing. *Alsager v. District Court,* 406 F. Supp. 10, 24-25 (S.D. Iowa 1975).