

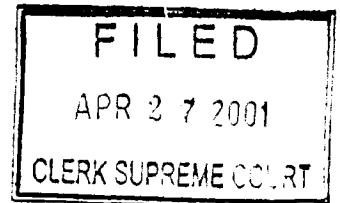
IN THE COURT OF APPEALS OF IOWA

No. 1-031 / 00-684
Filed April 27, 2001

**IN THE MATTER OF THE ADOPTION OF
S.M.H., A Minor Child,**

**R.L.L. and D.K.L.,
Petitioners-Appellants,
vs.**

**L.R.,
Intervenor-Appellee.**



Appeal from the Iowa District Court for Buchanan County, Bruce B. Zager
and K.D. Briner, Judges.

Foster care parents seek interlocutory review of district court orders
allowing a maternal grandmother to intervene in the foster care parents' adoption
proceedings. **REVERSED AND REMANDED FOR PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.**

William D. Werger of Hanson & Werger, Manchester, for appellants.

Janet L. Hoffman, Assistant Attorney General, for Iowa Department of
Human Services.

Dale L. Putnam of Putnam law office, Decorah, for appellee.

John Compton, Strawberry Point, for minor child.

Considered by Sackett, C.J., and Zimmer, and Miller, JJ.

ZIMMER, J.

Foster care parents seek interlocutory review of a district court order allowing the maternal grandmother to intervene in the foster care parents' adoption proceedings. They also challenge the district court's approval of the grandmother's requests for visitation and home study.

I. Background Facts and Proceedings. Symphony was born February 15, 1999. She was removed from her parent's care on April 22, 1999, adjudicated a child in need of assistance, and placed in Richard and Debbie's home for foster care placement. A home study of the maternal grandmother's home in Illinois did not recommend placement there.

A petition to terminate parental rights was filed and both parents consented to termination. Their parental rights were terminated in an order filed November 24, 1999, and the Iowa Department of Human Services was designated as the child's guardian and custodian. The termination order found Symphony's best interests would be served by termination of parental rights to free her for adoption by the foster parents. The termination order directed that Symphony was not to be moved from her preadoptive placement without prior court order. The order provided for ongoing supervision by the juvenile court pending adoption as provided in Iowa Code sections 232.117(5), (6), and (7) (1999).

On January 10, 2000, the maternal grandmother filed a petition to adopt Symphony in Clayton County, and on February 4, 2000, the foster parents filed an adoption petition in Buchanan County. On February 10, 2000, the

Department of Human Services, acting in its capacity as Symphony's legal guardian, filed a motion to dismiss the grandmother's Clayton County petition. The grandmother then moved to intervene in the adoption proceedings brought by the foster parents in Buchanan County.

On February 15, 2000, a district court judge entered an ex parte order granting the grandmother's motion to intervene. In response, the foster parents requested the court reconsider its order permitting intervention and moved to dismiss the grandmother's motion to intervene. On March 14, 2000, the Clayton County adoption case was consolidated with the Buchanan County case under one case number in Buchanan County.

On April 5, 2000, the district court affirmed its prior order granting the grandmother's motion to intervene. The foster parents filed an application for interlocutory appeal on April 21. In an order filed May 5, 2000, the district court granted the grandmother's requests for visitation with the child and the preparation of an updated home study. The application for interlocutory appeal was granted June 5, 2000.

On appeal, the foster parents argue the district court erred in failing to dismiss the grandmother's Clayton County adoption petition because it did not contain the allegations and attachments required by statute. They contend the district court erred in permitting the grandmother to intervene in their adoption proceedings because the juvenile court had exclusive jurisdiction over Symphony's guardianship and custody after the termination of parental rights and therefore the grandmother's recourse was to intervene in the juvenile court

action, not the adoption proceedings. They also contend the grandmother had no right to intervene because of the parents' voluntary agreement to relinquish their parental rights. Finally, the foster parents argue the district court erred in authorizing visitation and the preparation of an updated home study for the grandmother. The Department of Human Services has not appealed from any ruling of the district court, but has joined in the positions of the foster parents on appeal. Grandmother did not file a brief in this appeal.

II. Statutory Requirements. The foster parents first argue the grandmother's petition was not legally sufficient to state a claim upon which relief can be granted because it did not contain the attachments and allegations required under Iowa Code chapter 600 (1999). Specifically, they cite the failure of the grandmother to attach the order terminating parental rights and a preplacement investigative report as required in Iowa Code section 600.6, the lack of consent from Symphony's guardian or a statement of refusal as required by section 600.7, and the absence of a statement the child resided with the petitioner for more than 180 days as required by section 600.10.

The Iowa Department of Human Services filed a motion to dismiss the grandmother's petition for adoption on February 10, 2000, in Clayton County. This motion outlined the various deficiencies in the grandmother's adoption petition. After the grandmother filed her motion to intervene in the foster parents' Buchanan County adoption proceeding, the foster parents filed a motion to dismiss the grandmother's motion to intervene. Their motion did not ask the court to dismiss the grandmother's adoption petition. In the district court's April 5

order affirming the grandmother's motion to intervene, the alleged deficiencies in her adoption petition in Clayton County are not mentioned or discussed. We find no ruling in the record on any motion to dismiss the grandmother's adoption petition. While there may be merit to the foster parents' assertion on appeal that the grandmother's adoption petition is deficient, we are unable to review this issue because it was not properly preserved.

III. Intervention. The foster parents next argue the district court should have denied the grandmother's motion to intervene because the juvenile court had exclusive jurisdiction over guardianship and custody of Symphony after termination of parental rights. In the alternative, they argue the grandmother did not have a right to intervene where the natural parents had agreed to relinquish their parental rights.

Our review of adoption proceedings is de novo. *In re R.G.*, 450 N.W.2d 823, 825 (Iowa 1990). However, the issue of whether the district court had the authority to litigate concurrently with the juvenile court is a question of statutory construction. *Id.* Questions of construction are reviewed for errors at law. *State v. Stephenson*, 608 N.W.2d 778, 783 (Iowa 2000).

Iowa Code section 232.3 addresses the issue of concurrent court proceedings. "During the pendency of an action under this chapter, a party to the action is estopped from litigating concurrently the custody, guardianship, or placement of a child who is the subject of this action, in a court other than the juvenile court." Iowa Code § 232.3(1). Because adoption is a permanent placement of a child, section 232.3(1) applies to adoption proceedings. *In re*

R.G., 450 N.W.2d at 825. While the juvenile court may authorize a party to litigate concurrently in another court upon request of the party or on its own motion, no such authorization was ever granted in this case. Iowa Code § 232.3(2).

In its order affirming the grandmother's motion to intervene, the district court addressed the issue of concurrent jurisdiction, relying on the case of *In re A.J.H.*, 519 N.W.2d 90 (Iowa 1994), in reaching its conclusion. In *A.J.H.*, the child's foster parents filed an adoption petition in district court prior to the entry of a termination order in a CINA case. *A.J.H.*, 519 N.W.2d at 91. The court held that while section 232.3 prohibits the entry of a decree or order in another court proceeding, it does not prohibit the filing of an adoption petition. *Id.* at 92. Rather, the court allowed the adoption petition to be stayed "pending final disposition of the CINA proceeding." However, the court in *A.J.H.* never answered the question of when final disposition actually occurs. The district court, interpreting *A.J.H.*, found the juvenile court's entry of a termination order implicitly grants the district court concurrent jurisdiction to finalize Symphony's adoption. We disagree.

We conclude the district court's ruling contradicts the case of *In re R.G.*, 450 N.W.2d 823, 825 (Iowa 1990). In that case, foster care was granted to M.H. and L.H. after the parental rights of R.G.'s natural parents had been terminated. *Id.* at 823. After a review hearing, the juvenile court referee removed R.G. from M.H. and L.H., and transferred guardianship and custody of R.G. to the Iowa Department of Human Services. *Id.* at 824. M.H. and L.H. obtained a stay

pending review by a juvenile court judge and, on the same day, filed a petition to adopt in the district court. *Id.* The juvenile court adopted the referee's order and set aside the stay. *Id.* While the adoption petition was pending, DHS chose another family to adopt R.G. *Id.* In determining whether the provisions of section 232.3(1) applied to the case, the supreme court held a termination order does not equate to final disposition of a CINA adjudication. *Id.* at 825.

[A]n action is pending under chapter 232 until the juvenile court enters its dispositional order and releases the child upon finding that the purposes of the order have been accomplished and the child is no longer in need of supervision, care or treatment.

Id.; See also Iowa Code § 232.103(4). Because the provisions of section 232.3(1) applied, the court held it was incumbent upon the district court in the adoption action to defer to the juvenile court for authorization to proceed concurrently. *In re R.G.*, 450 N.W.2d at 825.

We find section 232.3(1) applies equally here. As was the case in *R.G.*, a termination order has been entered, but there has been no determination that Symphony is no longer in need of "supervision, care or treatment." In fact, the juvenile court's termination order requires a court order to move Symphony from her foster parents' care and provides for continuing supervision by the juvenile court pending adoption. Because final disposition has not been reached, we conclude the district court was required to defer to the juvenile court for authorization to proceed concurrently. In the absence of such authorization, we reverse the district court's order granting the grandmother's motion to intervene in the adoption proceedings.

The foster parents further contend the grandmother does not have a right to intervene in an adoption proceeding where the biological parents have voluntarily terminated their parental rights. Because we reverse the district court's grant of the grandmother's motion to intervene based on lack of authority, we need not address this issue.

IV. Visitation and Home Study. The foster parents also challenge the district court's authorization of visitation and a home study for the grandmother. Based on the previous order granting the grandmother's petition to intervene, the district court granted her requests for visitation and a home study so the grandmother could "be given a meaningful opportunity to establish her claim."

We find that the district court did not have the authority to grant the grandmother visitation for the same reasons it did not have the power to grant her motion to intervene. The district court was estopped from litigating issues of Symphony's custody until the juvenile court entered a final dispositional order or granted the district court authorization to litigate concurrently. Iowa Code §§ 232.3(1)-(2). "Custody decisions include the determination of visitation rights." *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995). Therefore, we reverse the district court's order granting visitation to the grandmother.

Finally, the foster parents contest the district court's order granting the grandmother's request for a new home study. The record reveals this home study was completed and filed on July 12, 2000. Because a home study of the

grandmother has already been completed, we find the issue is moot. Therefore, we do not address it.

**REVERSED AND REMANDED FOR PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.**

Miller, J. concurs; Sackett, C.J., concurs in part and dissents in part.

(Sackett, C.J. concurs in part and dissents in part)

I concur in part and dissent in part.

I agree with the majority that the issue of dismissal of the Clayton County adoption petition was not preserved for review. I disagree that Iowa Code section 232.3 precluded the juvenile court in Buchanan County from granting the grandmother's petition to intervene. Although an order in parallel court proceedings granting the grandmother custody, guardianship or placement would be prohibited, the Buchanan County order did not relate to or grant custody, guardianship or placement. See *A.J.H.*, 519 N.W.2d 90, 92 (Iowa 1994).

Unfortunately this interlocutory appeal has served to delay any court resolution of issues between Symphony's foster parents and maternal grandmother. While not relevant to this appeal the grandmother's home study indicates she does not intend to pursue adoption.