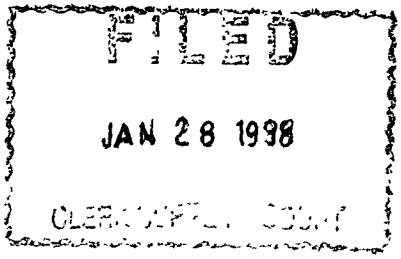
**IN THE COURT OF APPEALS OF IOWA**

000149

No. 7-717 / 97-0522




**IN THE INTEREST OF D.F.** and **D.F.**,
Minor Children,

**S.F.**, Paternal Grandmother,
Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen, Associate Juvenile Judge.

The paternal grandmother of two minor children appeals a district court ruling denying her request for custody. **AFFIRMED.**

Dennis A. Bjorkland, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, Stephen C. Robinson, Assistant Attorney General, and Gerda C. Lane, Assistant County Attorney, for appellee State.

Cynthia J. Taylor of Zamora, Taylor, Clark, Alexander & Woods, Davenport, guardian ad litem for minor children.

Considered by Cady, C.J., and Sackett and Vogel, JJ.

**VOGEL, J.**

Parental rights were terminated on the parents of two minor children, Dasjee F., born April 26, 1993, and DeAngelo F., born May 15, 1992, by order filed January 6, 1997. Guardianship was transferred to the Department of Human Services (DHS) and placement in foster care continued. No appeal was taken of the termination.

A subsequent hearing was held in February to allow DHS to address any special needs of the children for permanency planning. Sharon Foster, paternal grandmother of the children, was present at the hearing. The court ordered the guardianship with DHS to continue, with placement in the same foster home.

During the pendency of the Child in Need of Assistance proceedings, the children lived with Sharon for a time. However, due to the deteriorating and violent behavior of the children, Sharon's unwillingness to support a no-contact order, and poor participation in services offered and recommended to Sharon, the children were removed from her home and placed in foster care.

Sharon now appeals the February 18th ruling, which continued the children's placement in foster care pending permanency. She argues: (1) it is in the children's best interest that she be given custody pending formal adoption by her rather than forcing them into foster care; and (2) if she is not given custody, she is entitled to visitation rights.

Sharon does not have the legal right to appeal the February order. Although she attended many of the hearings, at no time did she intervene. *Cf. In re A.G.*, 558 N.W.2d 400, 402-03 (Iowa 1997). She was not a party to the termination of parental rights proceedings.

When parental rights are terminated, all rights of the biological family are severed, unless a party has independent rights, as an intervenor may have. *See In re B.B.M.*, 514 N.W.2d 425, 427-28 (Iowa 1994).

Even if we reached the merits of this appeal, Sharon's requests for custody and visitation would be denied.

***Custody.*** We review termination proceedings de novo. *In re R.J.*, 495 N.W.2d 114, 115 (Iowa App. 1992). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these determinations. *Id.* We are principally concerned with the best interests of the child. *Id.*

We defer to the juvenile court's finding that the children's placement in Sharon's home would subject the children to the risk of further harm by her failure to adequately supervise the children and establish rules, structure, and discipline in the household. We note the children had severe behavioral problems while at Sharon's home. A social worker reported the children's temper tantrums, as well as their violent proclivities toward each other. Moreover, Sharon has not participated

in the parenting education services offered to her to any degree that would convince us she is prepared to parent these children. Sharon has allowed the no-contact order to be violated by allowing the children to have contact with their parents. "Determination of parenting ability must necessarily be based on what is likely to occur in the future not only because of present conditions but also because of what has occurred in the past." *In re J.M.W.*, 492 N.W.2d 686, 690 (citing *Stafford v. Taylor*, 158 N.W.2d 621, 624 (Iowa 1968)).

A child welfare worker from Bethany Home observed the development of the children since they have been placed in the foster home. The children appear to be thriving in that environment. We find it would therefore not be in the best interests of the children if Sharon were granted custody of them.

***Visitation.*** Sharon proposed that if she were denied custody she should in the alternative be given visitation rights with her grandchildren. Our courts have recognized in varying contexts that the legal termination of natural parental rights extends to the termination of the natural grandparents' rights. *See id.*; *In re Gardiner*, 287 N.W.2d 555, 558 (Iowa 1980). Although it may be argued there are some benefits in allowing Sharon visitation with her grandchildren, we would run the risk of keeping alive part of the children's painful past. We find it would better serve the best interests of the children if they were to continue with the positive progress they

have made. This objective may be substantially impeded if Sharon could access the children. We would deny Sharon's visitation request upon reaching the merits.

For the above reasons, the juvenile court is affirmed in all regards.

**AFFIRMED.**

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

**SACKETT, J.** (concurring in part; dissenting in part)

I concur in part and dissent in part. I would reach Sharon's claim on its merits. Sharon has involved herself with these children and the child in need of assistance proceedings throughout. She is the only constant adult in their lives. I would honor her request for visitation.

The children will never be totally divorced from their biological family. They have been loved and continue to be loved by Sharon.

There is evidence the children have made progress in foster care, though there is no evidence they will be adopted by their foster parents. Nor is there any assurance they will be adopted by anyone.

The need for the children to know, while they remain in State care, their grandmother had not abandoned them and still loves them and is concerned about their welfare in my mind outweighs any problems with her exercising visitation.

I agree with the majority that Sharon should not currently be named custodian. If no successful adoptive placement is forthcoming, and there is no assurance one will, and the current custodial arrangement cannot continue, the issue of placement in the children's lives may need to be re-examined.