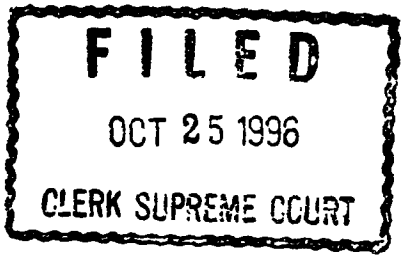
IN THE COURT OF APPEALS OF IOWA

No. 6-551 / 96-0370



IN THE INTEREST OF J.N., J.N., and J.N., Minor Children,

E.M. and B.M.,
Intervenors-Appellants.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

This is an appeal by foster parents from the juvenile court's ruling denying their request for guardianship of three children born in 1991, 1992 and 1994. **AFFIRMED AS MODIFIED.**

Craig C. Ament, Waterloo, for appellants.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee.

Sharon Briner, Public Defender's Office, Waterloo, guardian ad litem for minor children.

Heard by Sackett, C.J., and Habhab and Vogel, JJ.

SACKETT, C.J.

Edward and Beverly, foster parents of three young boys whose parental rights have been terminated, appeal from a juvenile court order denying their application to intervene in the child in need of assistance proceeding. They further contend the juvenile court should have removed the Iowa Department of Human Services as the children's guardian and they should have been appointed. They challenge certain procedures in the hearing that followed the filing of their petition to intervene and be appointed guardians. We affirm the trial court's refusal to remove the Iowa Department of Human Services as the children's guardian. We modify the juvenile court order to allow the foster parents to intervene in future proceedings establishing permanency of the children. Affirmed as modified.

We review de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, particularly as to the credibility of witnesses, but are not bound by these determinations. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Two of the children, brothers Justin, born in September 1991, and Jason, born in April 1993, were placed in foster care with Edward and Beverly in early November 1993. A third brother, James, born in May 1994, was placed with these foster parents shortly after his birth in mid-1994.

The only conclusion that can be gained from the record is that the foster placement was satisfactory. The children suffered from drug-related problems of

their parents. The juvenile court found, and on our de novo review of the record we agree, the boys have been in this foster home for a significant period of their childhood. The juvenile court further found, and we agree, they had excellent care in this home and the quality of that care was substantiated by social workers who visited the home on a regular basis and the medical professionals who treated the symptoms of the children.

In April 1995, the juvenile court terminated the parental rights of the boys' birth parents. The Iowa Department of Human Services was named their guardian and custodian. On October 11, 1995, Edward, fifty-two years of age, and Beverly, forty-eight years of age, filed the petition which led to this appeal. Edward and Beverly asked to intervene and to remove the Iowa Department of Human Services as guardian and appoint them guardians of the children. They alleged they were licensed foster parents in the State of Iowa. They further alleged they had advised the Department they wished to adopt the boys and they are proper persons to adopt them. They further contended they are the boys' only real family.

The matter came on before the juvenile court. The court limited the time the parties had to present their cases and accepted written reports in evidence. The juvenile court subsequently filed an order making the above-mentioned findings about the excellent care the children had received in Edward and Beverly's home. The court also found there were negative factors about Edward and Beverly, particularly they

had a tumultuous early relationship and they minimized the seriousness of the dysfunction of this relationship and the effects it had on children in their home. Other findings of the juvenile court, that on our review of the evidence we find to be correct, indicate Edward and Beverly had serious problems in their pasts. The State, in its brief, recognizes perhaps some of the things being held against their becoming adoptive parents should have affected their utilization as foster parents. The record shows Edward and Beverly have been foster parents to about fifteen children.

We first address the claim of Edward and Beverly that they should be allowed to intervene. The only finding that can be made from this record is that they love the children and have provided the one stable and safe harbor in the boys' lives. They meet the definition of an interested party under Iowa Code section 232.118(1) (1995). *In re C.L.C.*, 479 N.W.2d 340, 344 (Iowa App. 1991). The rights of the children's birth parents have been legally terminated and the focus of future proceedings is to seek the alternative for their future care that, based on facts known currently, appears to offer them the best opportunity to live in a physically and emotionally safe environment. The foster parents are bonded with the three boys. Their care of the children has been carefully monitored. There is nothing in the current record which allows us to determine the children may have an opportunity to be better served in another home or enter a situation with more stability. The only evidence is the children have had a home visit with another family which may lead to adoption.

We find the foster parents are sufficiently interested in the subject matter of this juvenile proceeding so as to have a right to intervene. *See C.L.C.*, 479 N.W.2d at 345, where this court found intervention proper under similar circumstance.

The foster parents next claim, in essence, their due process rights were violated because the time for the hearing was limited and written reports were admitted. These foster parents have no protected rights in these children. *See In re A.C.*, 415 N.W.2d 609, 615 (Iowa 1987). We recognize the importance of foster parents and are mindful of the provisions of Iowa Code section 232.116(2)(c) (1995). Their position is adequately protected by allowing them to intervene. There is no evidence the Iowa Department of Human Services is not capable of performing as the children's guardian and custodian. There would have been no benefit to enlarging the proceedings before the district court. We affirm the juvenile court's decision on the issue of guardianship.

We do not, in this opinion, arrive at any conclusion as to the proper adoption placement for these children. We hold it cannot be made on this record. We further hold that the foster parents have the right to intervene in future hearings when the issue of adoption is addressed.

AFFIRMED AS MODIFIED.