FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-253 / 89-1290

IN THE INTEREST OF C.A.G., A Minor Child,

S.G., Natural Father,

and

C.M. and J.M., Grandparents,

Appellants,

C.A.G., A Minor Child,

Cross-Appellant.

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Appeal from the Iowa District Court for Polk County, John Crouch, Judge.

The natural father and paternal grandparents appeal from a juvenile court ruling placing the child in the custody of the maternal grandparents, and granting the father and paternal grandparents visitation at least six times per year. The court also dismissed the grandparents' petition for intervention on the grounds that they had no legal interest. **AFFIRMED IN PART AND REMANDED WITH DIRECTION.**

Mark J. McCool, Cedar Rapids, for the appellant.

Lorraine K. Snead, of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for the appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

C.A.G. was born on October 31, 1981. Her father, S.G., and mother, G.G., were married in March 1981 and divorced in 1986. Both parents have had a history of drug and alcohol abuse. From March 1985 through June 1985, C.A.G. lived with her father, paternal grandmother and stepgrandfather. In January of 1986, G.G., the mother, filed allegations that S.G. had sexually abused C.A.G., and that C.M., her stepgrandfather, had also abused C.A.G. The juvenile court on January 17, 1986, issued a no contact order against S.G. from visiting, seeing, speaking to, or being in the immediate vicinity of C.A.G. The sexual abuse charge report against S.G. was expunged on March 6, 1987. The charge against the paternal stepgrandfather, C.M., was expunged on August 29, 1986.

Since July 15, 1987, C.A.G. has resided at the Beloit residential treatment facility in the legal custody of the Department of Human services because of her special needs for a structured and protective environment. Vicki Vermie, the foster care worker assigned to C.A.G.'s case at Beloit since August of 1987 was unaware of the expungment of the sexual abuse reports until June 27, 1989. Sharon Knudson, the residential caseworker assigned to C.A.G. throughout her stay at Beloit, testified at the permanency hearing that she still believed C.A.G. had been abused, although she did not know of any founded abuse reports.

On June 22, 1989, the paternal grandparents filed a petition of intervention for visitation rights. On July 21, 1989, a permanency hearing was held. At that hearing, the district court confirmed that C.A.G. was a child in need of assistance, that the custody and guardianship of C.A.G. be transferred to L.L. and I.L., her maternal grandparents, and that S.G., C.M., and J.M. be allowed visitation with C.A.G. at least six times per year, and C.A.G. undergo further psychiatric and psychological evaluation. The district court subsequently dismissed the paternal grandparents' application for intervention. S.G. and C.M. and J.M. have appealed.

C.M. and J.M. argue that the district court should have granted S.G. custody of C.A.G., or, in the alternative, C.A.G. should have been placed in nonfamily treatment. C.M., J.M. and S.G. all feel C.A.G's therapist hampered S.G.'s reuniting with C.A.G. because of her ongoing belief S.G. did sexually abuse C.A.G. They also argue that six weekends per year of visitation fails to promote good family relations. C.M. and J.M. further argue that the district court erred in denying their application to intervene on the basis that they had no legal interest, since under Iowa Code section 598.35, they do have certain rights regarding visitation.

Review of an order arising out of a child in need of assistance proceeding is de novo. In re Blackledge, 304

N.W.2d 209, 210 (Iowa 1981). The reviewing court gives weight to the juvenile court's fact findings, especially when considering the credibility of witnesses but is not bound by them. Iowa R. App. P. 14(f)(7). In child custody cases, the welfare and best interests of the child are paramount. Iowa R. App. P. 14(f)(15); In re S.V., 395 N.W.2d 666, 669 (Iowa App. 1986) (citing In re J.R.H., 358 N.W.2d 311, 317 (1984)).

In reviewing the record as a whole, we find the juvenile court's decision to place C.A.G. in the custody and guardianship of the maternal grandparents, under the supervision of the Department of Human Services, was in her best interest. The evidence presented at the permanency hearing showed that C.A.G's maternal grandparents could provide her with a loving home and emotional support. Both the therapist and caseworker that worked with C.A.G. during her stay at Beloit recommended placement of her with her maternal grandparents. Their recommendations were based on C.A.G.'s: (1) ongoing contact with her maternal grandparents throughout her stay at Beloit, (2) need for permanency, (3) progress while at Beloit, (4) express wishes to live with her maternal grandparents and her feelings of security with them, and (5) lack of attachment with her father due to his inconsistent contact with her throughout her stay at Beloit.

At the time of the hearing, no other placement appeared to be in C.A.G.'s best interest. Accordingly, we affirm the juvenile court's decision to place C.A.G. in the custody of her maternal grandparents.

C.M. and J.M. argue that they should have been allowed to intervene in the permanency hearing to protect their visitation rights as grandparents. In refusing to rule on the petition to intervene at the start of the permanency hearing the court stated that the only issue involved in the hearing was the placement of C.A.G and that visitation would not be addressed. Further the court attempted throughout the proceeding to restrict evidence to that pertinent to the placement issue. Usually in CINA proceedings the best interests of children dictate that rules of procedure be liberally applied in order that all probative evidence might be admitted. In Interest of J.R.H., 358 N.W.2d at 318. In this situation where only placement was at issue and the paternal grandparents were not considered as candidates and did not wish to be considered as potential candidates, the court did not err in not allowing them to intervene in the permanency proceedings. See, In re J.R., 315 N.W.2d 750 (Iowa 1982).

In the order following the permanency hearing the court ordered specific visitation for S.G. and the paternal grandparents even though evidence pertaining to visitation was not allowed to be presented during the hearing. The

paternal grandparents argue that this order was too restrictive while the State argues that paternal grandparent visitation is not in C.A.G.'s best interest. The guardian ad litem for C.A.G. argues that the visitation interferes with her due process rights to present evidence regarding the granting of visitation rights, that C.M. and J.M. have not established the substantial relationship with C.A.G. necessary for enforcement of grandparent visitation rights and that visitation with C.M. and J.M. is not in C.A.G.'s best interest.

Under Iowa Code section 232.104(4) (1989), visitation should be granted only if consistent with the child's best interest. Because the trial court refused to permit evidence on the visitation issue, the record lacks sufficient evidence for us to evaluate whether the limited visitation rights granted to C.A.G.'s father and paternal grandparents are consistent with C.A.G.'s best interests. We remand the issue of visitation rights for S.G., C.M., and J.M. for hearing and ruling by the juvenile court.

On remand, the juvenile court must balance C.A.G.'s best interest with the interest of promoting a parent-child relationship. In evaluating visitation rights on remand the juvenile court should keep in mind that the best interest of the child ordinarily requires a continuing

association with the child's noncustodial parent. Anthony v. Anthony, 204 N.W.2d 829, 833 (Iowa 1973).

Visitation of a grandchild arises from the child's best interest rather than from a statutory or common law right possessed by the grandparent. In re Guardianship of Ankeney, 360 N.W.2d 733, 737 (Iowa 1985). The placement of Iowa Code section 598.35, which provides for limited grandparent visitation rights, in the chapter of the Code on marriage dissolutions appears to be the action of the Code Editor. The act which created section 598.35 was an independent one containing only the provisions of the section; it was not amendatory of Chapter 598 or any other chapter. In the Matter of the Adoption of Gardiner, 287 N.W.2d 555, 557 (Iowa 1980).

A grandparent's visitation rights are derivative of the rights of their child who is the noncustodial parent of the grandchild. Olds v. Olds, 356 N.W.2d 571, 574 (Iowa 1984). Section 598.35 further states that:

> A petition for grandchild visitation rights shall be granted only upon a finding that the visitation is in the best interests of the child and that the grandparents had established a substantial relationship with the child prior to the filing of the petition.

Iowa Code § 598.35 (1989)(unnumbered paragraph).

Even though S.G. and his parents appear to be consolidated in their requests to be granted visitation with C.A.G. their rights are not absolutely analogous and

should be evaluated separately in the hearing conducted regarding visitation.

AFFIRMED IN PART AND REMANDED WITH DIRECTION.