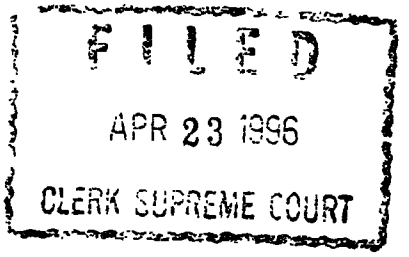
IN THE COURT OF APPEALS OF IOWA

No. 6-117 / 95-1954



IN THE INTEREST OF K.H., A Minor Child,

T. H. and S.H., Child's Great-Uncle and Aunt,
Appellants,

M.F. and J.F., Guardians and Conservators,
Appellees,
K.H., Minor Child,
Appellee.

Appeal from the Iowa District Court for Howard County, Thomas N. Bower, Judge.

Maternal great-uncle and great-aunt of minor child appeal from an order terminating the parental rights of the unknown father and refusing to rule on their motion to intervene on the issues of guardianship and custody. **REVERSED AND REMANDED.**

Kevin E. Schoeberl of Story & Schoeberl, Cresco, for appellants.

Andrew F. Van Der Maaten of Anderson, Wilmarth & Van Der Maaten, Decorah, for appellees guardians.

Richard D. Zahasky of Zahasky Law Firm, Decorah, for appellee minor.

Heard by Cady, P.J., Streit, J., and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

CADY, J.

This appeal presents the issue whether the great-uncle and great-aunt of a child whose mother died in a car accident have a legal right to intervene in a proceeding to terminate the parental rights of the unknown father for the purpose of being considered for appointment as the child's guardians and custodians. The district court refused to permit intervention. We reverse.

The child in interest is Kirscha. She was born March 20, 1993. Her father is unknown. On April 14, 1994, Kirscha's mother tragically died in a car accident. Kirscha was taken to live with her great-uncle and great-aunt, Marcus and Judy, who were appointed her guardians and custodians in a probate proceeding.

On August 29, 1995, Marcus and Judy petitioned to terminate the parental rights of Kirscha's unknown father, with the intention of adopting Kirscha. On October 6, 1995, four days prior to the termination hearing, Tony and Sandra, another great-uncle and great-aunt of Kirscha, petitioned to intervene in the termination proceedings. They did not object to the termination, but also wanted to adopt Kirscha, and requested custody and care of her pending the adoption.

The district court declined to rule on the petition to intervene, and granted the termination petition. It also appointed Marcus and Judy to serve as guardians and custodians of Kirscha. The district court indicated intervention was better suited for the adoption proceedings, and was not timely filed in the termination action.

Tony and Sandra appeal. They claim they had a legal right to intervene in the termination action which the district court was required to recognize.

I. Standard of Review

We review the denial of intervention on error. *In re B.B.M.*, 514 N.W.2d 425, 426 (Iowa 1994). Nevertheless, we recognize the trial court has some discretion to deny intervention in proper cases. *Id.*

II. Intervention

Any person interested in the subject or outcome of litigation may intervene any time before trial. Iowa R. Civ. Proc. 75. Persons are interested if they have a legal right which the proceeding will directly affect. *In re B.B.M.*, 514 N.W.2d at 427. An interest is sufficient to support intervention in a termination or adoption proceeding if the petitioner has a legal right to be considered as a guardian or custodian. *Id.*

A relative of a child does not generally have a right to intervene in proceedings involving the voluntary termination of parental rights. *In re B.B.M.*, 514 N.W.2d at 429-430. Permitting relatives to intervene in cases where the natural parents have agreed to relinquish their parental rights would disrupt the parents' choice to give the child a fresh start and elevate the interests of relatives above those of the parents and, most significantly, the child. *Id.*

The rights of grandparents and other relatives are derivative in nature. When parents chose to sever their rights, little remains for the grandparents and other relatives to assert. *See Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 95,

858 S.W.2d 122, 124 (1993). Furthermore, there is no statutory right to intervene in terminations under Iowa Code chapter 600A (1993). *Id.*

We recognize this case involves a voluntary termination under chapter 600A. However, it was not based on the voluntary actions of the natural parents, but instigated following the death of the child's only known parent. Thus, the justification for refusing the intervention of relatives in voluntary terminations and adoption proceedings does not apply in this case. A case involving the adoption of a child of deceased parents is dramatically different from a case where the only living parent consents to the adoption. *Muggenberg v. Kessler*, 630 P.2d 1276, 1278 (Okla. 1981). In the former situation, the relative's rights have not been voluntarily severed by the natural parents.

We conclude relatives have a legal right to be considered as a guardian or custodian of a child in a termination under chapter 600A brought following the death of the only known parent of the child. Accordingly, we find the district court erred in refusing to grant the petition to intervene. The petition was filed prior to trial, and the interest of the petitioners was significant.

We acknowledge the strong claim held by Marcus and Judy, as guardians and custodians of Kirscha during the eighteen months preceding the termination hearing. The additional passage of time during the pendency of this appeal has likely solidified their claim. Kirscha has been in the care of Marcus and Judy for a considerable

period of time. Nevertheless Tony and Sandra should have been given an opportunity to present their claim. They had a right to intervene.

We reverse the district court's decision to refuse to permit intervention and remand for a new hearing on the appointment of a guardian or custodian.

REVERSED AND REMANDED.