IN THE COURT OF APPEALS OF IOWA

No. 2-061 / 91-1790

1030

IN THE INTEREST OF J.M.W. and T.R.W., Minor Children,

R.W. and **H.W.,**

Appellants,

B.B. and **A.B.,**

Appellees.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Cass County, J. C. Irvin, Judge.

The maternal grandparents of the twin minor children, appeal from a district court order placing custody of the children with a custodian for purposes of adoptive placement with B.B. and A.B. **REVERSED.**

John Otto of Otto, Lorence & Barry, Atlantic, for appellants.

John M. Trewet and J.C. Van Ginkel of Kluever, Van Ginkel & Trewet, Atlantic, for appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

The natural mother, S.W., gave birth to twins, J.W. and T.W., on February 22, 1991. Two men, P.B. and T.F., have been alleged to be the twins' father. Upon discharge from the hospital, the twins and S.W. moved in with S.W.'s parents, R.W. and H.W. On May 21, 1991, S.W. filed a release of custody and placed the twins with a custodian, P.C.A., for the purpose of placing the twins in an adoptive home. The same day, P.C.A. placed the twins with B.B. and A.B., a couple from Montgomery County, Iowa.

On June 17, P.B., one of the men alleged to be the twins' father, filed a petition for termination of S.W.'s, parental rights. He requested the twins be placed with their maternal grandparents. A month later S.W. filed a paternity action alleging T.F. was the twins' father, despite her earlier identification of P.B. as the twins' father on the affidavit she filed with her release of custody. Later, S.W. and P.C.A. filed a petition for termination of P.B. and T.F.'s parental rights. P.B. filed a voluntary consent to termination of his parental rights and to adoption of the twins by B.B. and A.B.

Eventually, the termination petitions were consolidated for hearing in October 1991. At the hearing, S.W., P.B., and T.F. consented to the termination of their parental rights in order that the twins could be placed for adoption. Evidence was then taken on whether the twins should be placed with their maternal grandparents, who had

been allowed to intervene, or with B.B. and A.B. Following the hearing, the district court terminated the parental rights of the mother and the two possible fathers and placed the children with P.C.A. for adoption by A.B. and B.B.

The grandparents appeal. They contend the district court gave undue weight to their age and failed to give sufficient weight to their blood relationship to the children. B.B. and A.B. disagree and assert the district court should not have allowed the grandparents to intervene in these proceedings. B.B. and A.B. also seek sanctions.

This court is presented with two primary questions: (1) were the grandparents properly allowed to intervene, and if so, (2) what placement will be in the twins' best interest? Of course, our overarching concern is, as always, the best interests of the children. Iowa R. App. P. 14(f)(15). Our scope of review is de novo. Iowa R. App. P. 4.

I. **Intervention.** B.B. and A.B. contend the trial court erred in allowing the grandparents to intervene in these proceedings. We disagree.

Iowa Rule of Civil Procedure 75 provides:

> Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or defendant or claiming adversely to both.

Iowa Code section 600A.9(1)(b) (1991) directs the trial

court to appoint a guardian and allows the court to appoint a custodian for the children upon terminating the natural parents' rights. Although the statute does not list alternatives from whom the court is to choose a guardian and custodian as section 232.117(3) does, the statute does not exclude anyone from consideration either. As such, the twins' maternal grandparents are not excluded by the statute as possible guardians and custodians. See In re J.R., 315 N.W.2d 750, 752 (Iowa 1982). Because the grandparents may, under section 600A.9(1)(b), be considered as guardians and custodians following termination of parental rights, the supreme court has held grandparents were "sufficiently 'interested in the subject matter' of these termination proceedings so as to have a right to intervene under Iowa R. Civ. P. 75." Id. We believe the trial court properly allowed the grandparents to intervene and properly considered the grandparents as possible guardians and custodians. See In re C.L.C., 479 N.W.2d 340, 343-44 (Iowa App. 1991)(persons qualifying as "suitable" have legal right to be considered as guardians and custodians of children after termination of parental rights).

Appellees assert the wishes of the children's natural parents should govern who gains guardianship and custody of the children and, therefore, who eventually adopts the children. We disagree.

While the scheme contemplated by the appellees may prove to reflect the practical reality, chapter 600A does not provide the district court with the minor role of approving or vetoing the choice made by the natural parents. Rather, the statute gives no indication of the weight, if any, the court should afford the natural parents' choices when appointing a guardian and custodian for the children. See Iowa Code § 600A.9(1)(b) (1991). The statute draws no distinction between the factors to be considered in a case such as this in which the natural parents voluntarily consent to the termination of their parental rights hoping the children will be adopted by a certain family and a case in which the parents resist the termination hoping to keep the children. The standard for appointing a guardian and custodian is the same in both cases--the best interests of the children. See In re J.R., 315 N.W.2d at 752-53.

As such, "private placement" adoptions, as contemplated by the appellees, do not have such certainty of outcome in Iowa. While as a practical matter, the natural parents' choices in voluntary termination actions usually come to fruition, the statute does not mandate such a result. Upon termination, it is the court, rather than a natural parent, who is directed to appoint a guardian, and the appointment is to be governed by the children's best interests.

II. Placement. The grandparents assert the twins should have been placed with them. We agree. The trial court concluded both families, the grandparents and B.B. and A.B., were suitable as adoptive parents. The twins' grandparents are both forty-nine years of age, they have raised five children, and they desire to adopt the twins. They have the financial ability to raise the twins, and it is clear they love and are committed to their grandchildren. They are in good health and own a home which they are expanding in a rural setting between Atlantic and Wiota, Iowa. They have been approved as adoptive parents by an investigator certified by the Iowa Department of Human Services.

B.B. and A.B. are thirty-seven and thirty-four respectively. They live in Red Oak, Iowa, and have a three-year-old adopted daughter. Both have a college education; A.B. stays home with their daughter while B.B. works as a sales representative. They are financially able to raise the twins and have developed a strong loving relationship with them. They too have been approved by a certified adoption investigator.

We agree both sets of potential adoptive parents are fit and suitable. However, we do not share the trial court's opinion of which set is better suited. The trial court isolated one factor it deemed significant in determining which of the two sets of potential parents would be better able to minister to the twins' needs. The

trial court concluded the grandparents would be less able because they are fifteen years older than the youngest of B.B. and A.B.

Certainly the age of potential adoptive parents may be considered in deciding what placement is in the children's best interests. See, e.g., In re J.R., 315 N.W.2d at 753. However, we do not believe this factor alone should be determinative. The Iowa Supreme Court has refused to recognize age itself as a controlling factor in determining which placement is in the children's best interest. See, e.g., In re the Guardianship of Reed, 468 N.W.2d 819 (Iowa 1991); Kouris v. Lunn, 257 Iowa 1267, 136 N.W.2d 502 (1965). We find another factor to be more important in this case.

The grandparents assert they should be given a preference, once they have been found to meet the threshold requirement of fitness, over non-family members in gaining custody. We believe it is the best interests of the children, regardless of claims based on a particular status or relationship of the parties, which governs our analysis. Iowa R. App. P. 14(f)(15). Nevertheless, we recognize the grandparent-grandchild relationship is a very important, though not determinative, factor to be considered in that analysis. We believe the relationship can tip the scales in favor of the grandparents when a comparison of all other factors leaves the parties in equipoise. We believe it is generally in children's best

interests to be kept within their families. See In the Matter of the Guardianship of Reed, 468 N.W.2d at 825; In re J.R., 315 N.W.2d at 753. It is desirable for children to maintain an identity with their natural families. See In re J.R., 315 N.W.2d at 753.

In our de novo analysis of which placement would be in the twins' best interest, we afford greater weight to the blood relationship between the twins and their maternal grandparents than we do to the difference in the prospective parents' ages. Finding everything else equal, we conclude the twins should be placed with their maternal grandparents.

Accordingly, we reverse the district court and order guardianship and custody of the twins be transferred to Attorney John Otto for adoptive placement with R.W. and H.W., the twins' maternal grandparents. The appellees' request for sanctions is denied.

The costs of this appeal are taxed to the appellees.

For all the reasons stated, the judgment of the district court is reversed.

REVERSED.