IN THE COURT OF APPEALS OF IOWA

No. 1-489 / 00-1703
Filed October 24, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF M.R.H.,
Minor Child,
vs.

K.M. and G.M., Intervenors,
Appellants.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

Maternal grandparents appeal from a termination of parental rights order.

AFFIRMED.

Constance Peschang Stannard of Johnston & Nathanson, PLC, Iowa City, for appellants.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee-State.

Leslie Lamping of Day, Meeker, Lamping & Schlegel, Washington, for minor child.

Heard by Hayden, Habhab, and Harris, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

HAYDEN, S.J.

Maternal grandparents appeal from a termination of parental rights order. They contend the court erred in not placing the child with them upon termination and in denying the guardian ad litem's request for a continuance. We affirm.

I. Background Facts and Proceedings. Patsy and Robert are the parents of Mystic, born in 1999. Patsy's parental rights to her two older children, Mercedes and Tommy, were previously terminated and the children were placed with her mother, Gloria, and stepfather, Keith, for adoption.

Mystic was removed from parental custody and placed in foster care in November 1999 when she was six weeks old. She was adjudicated in need of assistance in January 2000. In April, Gloria and Keith requested visits with Mystic. A court granted the request in June. Meanwhile, a termination petition was filed by the State and was heard in July, August, and September 2000. The court terminated both parents' parental rights.

Gloria and Keith requested Mystic be placed with them. The court determined given the grandparents' ages, financial and intellectual circumstances, as well as the fact the other two children in their home had special needs, it would not be in Mystic's best interests to be placed with them. The court overruled the guardian ad litem's request for a continuance so an assessment could be made to determine whether the grandparents would be able to parent all three children. The mother appealed termination of her parental rights, and the grandparents appealed the court's ruling regarding

placement. The mother's appeal was dismissed pursuant to Iowa Rules of Appellate Procedure 32 and 104.

Keith and Gloria argue the court erred in not placing Mystic with them and in failing to grant the guardian ad litem's request for a continuance. They also contend the Iowa Department of Human Services failed to timely consider them as a placement and failed to timely act on their request for visits.

II. Scope of Review. Our review of proceedings to terminate a parent-child relationship is de novo. *In re S.J.*, 620 N.W.2d 522, 524 (Iowa Ct. App. 2000). We give weight to the trial court's findings of fact, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Our primary concern is the best interests of the child. *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000). We look at both the child's long-range and immediate interests in making this determination. *Id.*

III. Placement of the Child. Gloria and Keith contend the court erred in placing Mystic in the custody of DHS instead of them.

Iowa Code section 232.117(c) states:

> If the court terminates the parental rights of the child's parents, the court shall transfer the guardianship and custody of the child to one of the following:
>
> a. The department of human services.
>
> b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
>
> c. A parent who does not have physical care of the child, other relative, or other suitable person.

There is no statutory preference for placement with a relative. *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992). Instead, the primary concern is the best interest of the child. *Id.*

The juvenile court considered the possibility of placing Mystic in her grandparents' custody and concluded such placement would not be in her best interests. Gloria and Keith are in their forties, and Gloria has some health problems. The court noted Gloria and Keith already had two children in the home who required special attention. The court believed the special needs of these children limited the grandparents in being able to care for Mystic, a toddler who required enormous time and attention herself. Additionally, the grandparents resided in a three-bedroom trailer that was cluttered and in need of repair. The court expressed concerns about Gloria and Keith's relationship with Mystic's mother, Patsy. Although their relationship is volatile, the evidence suggests Gloria and Keith have allowed Patsy to watch one of the children, and the court had concerns about whether they would allow Patsy to have contact with Mystic.

Upon review of the record, we agree with the conclusions of the juvenile court. Although Gloria and Keith are an adequate placement for their older grandchildren, they are not a good placement for Mystic. We affirm the juvenile court's placement of guardianship with DHS.

IV. Continuance. The guardian ad litem requested the court grant a continuance so Keith and Gloria could have visitation with Mystic along with their two older grandchildren, allowing a record to be made on how the grandparents

would interact with all three children. Gloria and Keith argue the court erred in denying this request.

Whether to grant or deny a motion for continuance is at the discretion of the trial court. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987). Such a decision will be overturned on appeal only where there has been a clear abuse of discretion and injustice has been done to the party seeking the continuance. *Id.* An abuse of discretion is found where the trial court's action was unreasonable under the attendant circumstances. *Id.*

The court denied the guardian ad litem's request for a continuance, finding it was not in Mystic's best interests to delay the termination proceedings where the grounds for termination had been met and the child was adoptable. We agree. Once the statutory time limit has been reached, the case must be viewed with a sense of urgency. *See In re M.R.*, 487 N.W.2d 99, 102 (Iowa Ct. App. 1992). It is not in a child's best interests to keep him or her in a temporary foster home. *Id.* "Children should not be forced to endlessly suffer the parentless limbo of foster care." *Id.*

Keith and Gloria saw Mystic only twice before she was removed from Patsy. They then waited five months before requesting visitation. The court considered Keith and Gloria's failure to request visitation earlier in deciding to deny the continuance. Keith and Gloria argue they would have made an earlier request, but were discouraged by DHS from doing so. The court did not find this argument credible. Although we are not bound by them, we give weight to the

trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The juvenile court did not abuse its discretion by denying the guardian ad litem's motion for a continuance.

AFFIRMED.