

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF CARLOS R. ET AL.

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IN RE INTEREST OF CARLOS R. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

NICOLE R., APPELLEE, AND THOMAS K. AND VALERIE K., INTERVENORS, APPELLANTS.

Filed July 21, 2009. No. A-09-089.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge.
Affirmed.

Carol Pinard-Cronin for appellants.

Donald W. Kleine, Douglas County Attorney, Sarah M. Moore, and Carolyn H. Curry,
Senior Certified Law Student, for appellee State of Nebraska.

IRWIN, SIEVERS, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. of App. P. § 2-111(B)(1), this case was ordered submitted without oral argument. Thomas K. and Valerie K. appeal from an order of the juvenile court, which order found that they were no longer entitled to intervene in the juvenile court case involving their maternal grandchildren, Carlos R., Carlynn R., and Joshwah R., and which permitted them only supervised visitation with Joshwah. Because a grandparent no longer has a legal interest in a juvenile court proceeding or a right to visitation once the paternal rights have been terminated over the grandchildren, we affirm.

II. BACKGROUND

In March 2006, Carlos, Carlynn, and Joshwah were adjudicated to be children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the lack of proper parental care by reason of the faults or habits of Nicole R., their biological mother. The children were placed in the care and custody of the Department of Health and Human Services (DHHS). On May 14, 2007, the State filed a motion to terminate Nicole's parental rights as to each of the three children.

After the State filed the motion to terminate Nicole's parental rights, but before a termination hearing was held, Nicole's parents, Thomas and Valerie, filed a petition to intervene and a motion to place the children in their residence, pending the resolution of the juvenile court case. At a hearing held on September 4, 2007, the juvenile court granted Thomas and Valerie's petition to intervene and permitted them reasonable rights of visitation with the children. The court continued the motion to place the children in Thomas and Valerie's residence, pending completion of a home study.

At that same hearing on September 4, 2007, Nicole voluntarily relinquished her parental rights as to Carlos, Carlynn, and Joshwah.

In November 2007, the juvenile court granted Thomas and Valerie's motion to place the children in their residence. Thomas and Valerie became the children's foster parents. DHHS indicated to the court that Thomas and Valerie were being considered as a potential adoptive placement.

From November 2007 to December 2008, Thomas and Valerie were permitted to intervene in the case. They remained as the children's foster parents and actively participated in the juvenile court proceedings.

There is some indication in the record that beginning in September or October 2008, Thomas and Valerie began to report that Joshwah was acting out and that he needed further psychological testing. Ultimately, Thomas and Valerie requested that Joshwah be moved to another placement where he could receive the help that he needed.

During this same time period, communication between DHHS and Thomas and Valerie began to disintegrate. DHHS reported that Thomas and Valerie were not responding to telephone calls and e-mails and were not abiding by DHHS' decisions.

In December 2008, Thomas and Valerie filed a motion with the court entitled "Motion for Ex Parte Order." In the motion, Thomas and Valerie asserted that DHHS had not followed court orders, had prohibited them from visiting Joshwah, and had not provided them with proper notice of a "sibling evaluation." Thomas and Valerie requested that the juvenile court "enjoin [DHHS] from removing the minor children, Carlos and Carlynn[,] from their grandparents' care . . . for a sibling evaluation."

At a hearing held on December 17, 2008, the juvenile court addressed Thomas and Valerie's motion. Prior to the start of the hearing, the court stated, on the record that "there was an in chambers conference between the Court and all attorneys of record, the contents which will be set forth on record with respect to the in chambers conference." The court proceeded to address the issues presented by Thomas and Valerie's motion.

At the hearing, the court found that “Thomas . . . and Valerie . . . no longer enjoy the benefit of grandparents” The court determined that Thomas and Valerie were no longer entitled to intervene in the case. The court ordered that any future contact between Thomas, Valerie, and Joshwah “shall be supervised and as arranged by [DHHS].” The court noted:

[Thomas and Valerie] must understand their limitations here, and that their continued contact with Joshwah and/or their continued status as foster parents must be followed and must be with the understanding that they just cannot make decisions concerning these children. They are wards of [DHHS], and they must address any concerns or plans concerning the minor children, whether its travel, visits, or evaluations with [DHHS].

Thomas and Valerie timely appeal here.

III. ASSIGNMENTS OF ERROR

Thomas and Valerie assign, restated and consolidated, that the juvenile court erred in determining that they were no longer entitled to intervene in the juvenile court case and in permitting them only supervised visitation with Joshwah.

IV. ANALYSIS

1. STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court’s findings. *In re Interest of C.H.*, 277 Neb. 565, 763 N.W.2d 708 (2009); *In re Interest of Dustin S.*, 276 Neb. 635, 756 N.W.2d 277 (2008); *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). In reviewing questions of law arising in such proceedings, an appellate court reaches a conclusion independent of the lower court’s ruling. *In re Interest of Kayle C. & Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998).

2. INTERVENTION

Thomas and Valerie assert that the juvenile court erred in determining that they were no longer entitled to intervene in the proceedings because they no longer “enjoy[ed] the benefits of grandparents.” We conclude that grandparents who were previously allowed to intervene in a juvenile court action lose standing after their child’s parental rights over the grandchildren have been terminated. As such, we affirm the juvenile court’s determination that Thomas and Valerie are no longer entitled to intervene in the juvenile court proceedings.

Grandparents have a direct legal interest in juvenile dependency proceedings involving their biological or adopted grandchildren which entitles them to intervene as a matter of right in such proceedings prior to final disposition. *In re Interest of Kayle C. & Kylee C.*, *supra*. However, the rights of grandparents are altered once parental rights of a child have been terminated.

The Supreme Court in *In re Interest of Kayle C. & Kylee C.*, recognized that if a dependency proceeding is finally resolved by a termination of parental rights pursuant to § 43-292, the relationship between grandparent and grandchild is also terminated. *Id.* See, also, Neb. Rev. Stat. § 43-1801 (Reissue 2008) (under grandparent visitation statute, definition of grandparent does not include biological or adoptive parent of minor child’s biological or adoptive parent whose parental rights have been terminated).

Because Thomas and Valerie's relationship with their grandchildren was terminated upon the termination of Nicole's parental rights, Thomas and Valerie no longer have a legal interest in the juvenile court proceedings. Therefore, the juvenile court did not err in determining that Thomas and Valerie were no longer entitled to intervene in the juvenile court proceedings.

Thomas and Valerie assert that their status as the children's foster parents and "prospective adoptive parents" should permit them to continue to intervene in the case despite the termination of their role as grandparents. Neb. Rev. Stat. § 43-1314 (Reissue 2008) provides that a court must provide notice of court reviews pertaining to a child in a foster care placement to both foster parents and the preadoptive parent. However, § 43-1314 also provides, "Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to review." See, also, *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002) (concluding that foster parent does not have interest in placement of adjudicated child sufficient to warrant intervention in juvenile proceedings as matter of right).

Thomas and Valerie's status as the children's foster parents and preadoptive parents entitle them to notice and an opportunity to participate in court reviews pertaining to foster care placement. However, this status did not confer a legal interest warranting intervention as a matter of right. Their assertion has no merit.

Thomas and Valerie also assert that the juvenile court erred in determining sua sponte that they were no longer entitled to intervene without providing them with notice or an opportunity to be heard. We first note that Thomas and Valerie were given notice of the December 17, 2008, hearing. In fact, the hearing was scheduled by Thomas and Valerie to address the issues raised in their "Motion for Ex Parte Order." Although they did not attend the hearing, they were represented by counsel.

We also note that prior to the December 17, 2008, hearing, the parties met in an "in chambers conference" with the court. It is not entirely clear from the record exactly what transpired at this conference. However, there is some indication that the parties discussed the issue of Thomas and Valerie's status as intervenors. We are unable to determine from the record whether the court or another party raised this issue. Regardless of who raised the issue, we can presume that Thomas and Valerie's counsel had some opportunity to address the issue during the in chambers conference.

Furthermore, Thomas and Valerie do not assert what evidence they would have provided to the court had they been given an opportunity to be heard. We are not aware of any evidence that could nullify the termination of their role as grandparents of the children. It is clear that Nicole relinquished her parental rights. After that point, Thomas and Valerie were no longer entitled to intervene as a matter of right. Thomas and Valerie's assertion has no merit.

Because a grandparent no longer has a legal interest in a juvenile court proceeding once the paternal rights have been terminated over the grandchildren, we affirm the order of the juvenile court which determined that Thomas and Valerie were no longer entitled to intervene in the juvenile court proceedings.

3. VISITATION WITH JOSHOWAH

Thomas and Valerie also assert that the juvenile court erred in permitting them only supervised visitation with Joshwah. We conclude that Thomas and Valerie are not entitled to continue visitation with Joshowa as a matter of right, and as such, the juvenile court did not err in limiting their visitation with Joshwah.

In *In re Interest of Ditter*, 212 Neb. 855, 326 N.W.2d 675 (1982), the Supreme Court held that once parental rights of a child have been terminated as to a natural parent, the natural parents of such parent whose rights have been terminated are not entitled to continue visitation as a matter of right. In addition, this court has found, “It is the law in this jurisdiction that juvenile courts have broad discretion to accomplish the purpose of serving the best interests of the children involved.” *In re Interest of Crystal T. et al.*, 7 Neb. App. 921, 927-28, 586 N.W.2d 479, 483 (1998).

Unfortunately, there is limited evidence contained in our record as to the circumstances surrounding the juvenile court’s decision to limit Thomas and Valerie’s visitation with Joshwah. It is clear that Thomas and Valerie requested that Joshwah be removed from their home as a result of his behavioral problems. After DHHS found a different foster home for Joshwah, Thomas and Valerie requested visitation with Joshwah for themselves and for Carlos and Carlynn. There is some indication in the record that this request for visitation was denied; however, it is not clear why the request was denied or whether Thomas and Valerie had any contact with Joshwah after he was removed from their home. There is also an indication that Joshwah’s removal from Thomas and Valerie’s home was harmful to Joshwah and that Joshwah was struggling.

Given the lack of evidence concerning Joshwah’s present circumstances and Thomas and Valerie’s current relationship with Joshwah, we cannot find that the juvenile court erred in its decision on the issue of visitation. We affirm the court’s order permitting Thomas and Valerie only supervised visitation with Joshwah.

V. CONCLUSION

Upon our de novo review, we conclude that the juvenile court did not err in determining that Thomas and Valerie were no longer entitled to intervene in the juvenile court case involving their maternal grandchildren or in permitting Thomas and Valerie to have only supervised visitation with Joshwah.

AFFIRMED.