

In re Interest of Artamis G. et al.

Caselaw No.

No. A-18-743

Filed on

Tuesday, April 16, 2019

Summary:

In this the case Auburne G., claims she is the grandmother of the six children of Krysta G.'s. In February 2017, a petition was filed in Douglas County Juvenile Court seeking to adjudicate Krysta's six children under Neb. Rev. Stat. § 43-247(3)(a)(Reissue 2016). In August 2017, Auburne filed a complaint to intervene alleging she was the "in loco grandparent" of the children and therefore had an interest in the adjudication proceedings under Neb. Rev. Stat. § 25-328 (Reissue 2016). After a hearing the juvenile court denied Auburne's complaint holding she was not a bio relative, nor a stepparent and additionally that Auburne resided in Texas. Auburne did not appeal this decision. In May 2018 Auburne again filed a complaint to intervene, alleging she was the grandmother of the children. At the hearing on the complaint Auburne attempted to prove that she adopted Krysta in Texas in 2017, the birth certificate was offered, attorney for the State and the guardian ad litem objected to the offer and the juvenile court sustained the objections on the basis that the birth certificate was not authenticated. Krysta also testified at the hearing "admitting she was thirty-three years old at the time of adoption, lived in Omaha for the last eight years, confirmed Auburne has lived in Texas for the last ten years, confirmed that her (Krysta's) biological mother was still living and that her bio mother had not relinquished nor had her parental rights been terminated. The juvenile court denied Auburne's second complaint to intervene, Auburne timely appealed.

The Court of Appeals decision first discusses Auburne's ability to intervene as governed by § 25-328, which states:

Any person who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, in any action pending or to be brought in any of the courts of the State of Nebraska, may become a party to an action between any other persons or corporations, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendants in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, either before or after issue has been joined in the action, and before the trial commences.

A prerequisite to intervention under § 25-328, is that the intervenor must have a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered by the action. *Wayne L. Ryan Revocable Trust v. Ryan*, 297 Neb. 761, 901 N.W.2d 671 (2017).

The Court also discussed Auburne's argument that she stood "in loco parentis" over the minor children. Since that was the basis of Auburne's first complaint to intervene which the juvenile court denied and since Auburne did not appeal that order (which was a final order) the Court of Appeals held that she had waived this argument. Auburne's next argument was that she is the grandmother of the children; the Court laid out that Krysta a) failed to prove Auburne was her mother, b) failed to give the court Texas law on adoption, c) since TX law not

produced must use Nebraska adoption law which is governed by Neb. Rev. Stat. § 43-101(2) (Reissue 2016). Auburne failed to prove that she was Krysta's mother and, thus, the children's grandmother. Absent such relationship, Auburne did not have a legal right to intervene as a grandparent.
