

**IN THE COURT OF APPEALS OF IOWA**

No. 0-148 / 10-0027  
Filed March 24, 2010

**IN THE INTEREST OF J.D.,  
Minor Child,**

**J.M.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals a juvenile court order requiring her to move out of her relatives' apartment as a condition of her progress toward reunification with her child. **AFFIRMED AS MODIFIED.**

Jamie A. Splinter of Splinter Law Office, Dubuque, for appellant mother.

Matthew Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Sarah Stork Meyer, Dubuque, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**VAITHESWARAN, P.J.**

Jody gave birth to a child in mid-2009. Days after his birth, the Department of Human Services applied to have him removed from Jody's care based on the termination of her parental rights to other children as well as certain mental health diagnoses. The juvenile court ordered the child removed, and subsequently adjudicated him in need of assistance. The child was placed in foster care.

At all relevant times, Jody lived in an apartment with her aunt and uncle and their son. The primary issue in juvenile court related to the condition of this apartment. In an adjudication order, the court found that its size, the fact that several people smoked inside, and the presence of dogs all posed safety concerns if the child were returned to Jody's custody at that residence. However, in a subsequent dispositional order, the court found that Jody and her relatives resolved the safety concerns and the apartment was appropriate "for family interactions and potential temporary placement."

Notwithstanding this finding, the court determined that the child's best interests would be served by implementing "the Department's goal of independent living." The court ordered Jody to "obtain her own residence that is appropriate for [the child]," reasoning that "Jody needs to demonstrate she has the ability to properly care for herself and a small child independently." Meanwhile, the juvenile court ordered that the child remain in the care, custody, and control of the department for continued foster care placement. See Iowa Code § 232.102(1)(c) (2009) (stating a juvenile court is authorized to select

among several dispositions, including transfer of the child's legal custody to the Department of Human Services).

On appeal, Jody contends "the trial court erred by ordering [her] to obtain her own residence that is appropriate for [her son]." The State responds by recounting Jody's lengthy history with the department and by asserting that the proper focus is on the larger issue "of what placement would further the best interests of [the child]." While we agree with the State that the ultimate consideration is whether Jody should be reunified with her child and we acknowledge the oft-repeated statement that parents' past behaviors are a good predictor of their future conduct, see *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998), the issue as framed by Jody is much narrower. Our review is solely of the housing issue, and it is de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984).

As noted, the department insisted that Jody find and maintain her own housing as a condition of reunification. Initially, this requirement was premised on the unsafe conditions in her relatives' apartment. When the department apprised Jody of these conditions, she and her aunt responded by removing carpeting, washing curtains, smoking outside, and cleaning the house twice a day. Although they did not relinquish the dogs, the department social worker conceded that the dogs alone were not a safety concern. At the dispositional hearing, Jody testified and the juvenile court found that Jody had resolved the immediate safety concerns in the apartment.

The department next attempted to introduce evidence about the backgrounds of Jody's aunt and uncle and their parenting history. The State

conceded, however, that certain allegations against Jody's uncle were unproved. Additionally, Jody's counselor testified that her aunt and uncle served as mother and father figures, provided "[o]ne of the more stable" homes she had been in, and met her needs "for safety and family connection and family support." He concluded that Jody was "doing about the best I have ever seen her." While he opined that Jody should work towards an independent living arrangement as a "long-range" goal, he stated that her present living situation was an optimal environment for reunification "right now." When asked about the timing of the independent living goal, he stated, "six to twelve months to get services in place, work on those skills, get housing lined up."

The counselor's testimony concerning the timing of a move was at odds with the testimony of a department social worker, who opined that Jody should move "as soon as she can." When asked why, she testified, "Because I feel she needs to demonstrate that she can maintain an apartment." She continued, "My concern would be just the support—whether that is going to be a long-term support for her, whether or not [her aunt and uncle] would pass a home study, as we ask other families that are considering living somewhere." No mention was made of health or safety concerns—the only articulated concern was whether Jody's aunt and uncle would remain a support system for her.

Notably, the department found no better alternative for Jody. For example, the agency recommended that she move to a residential facility, which did not provide for parent-child reunification. Unaware of this restriction, Jody reluctantly moved in but was almost immediately assaulted by another resident. She moved out two days later and returned to the apartment of her aunt and

uncle, which she characterized as “the first home, actual home home I’ve ever had and felt safe.”

While the department reported that it explored other housing options for Jody, it had not secured financial subsidies to make those options viable, even though the department’s social worker acknowledged that Jody sent in her “housing paper.” When Jody questioned a department case management specialist about assistance, she was told that she would not need the assistance because he believed she would not get her child back.

We recognize that one facility recommended by the department would not take Jody because she had previously left the facility. While the record does not reflect why Jody left, it does reflect that Jody’s unstable housing situation had stabilized in the year preceding the disposition hearing. The department also conceded that Jody would have required support services at this facility, services that had yet to be funded.

In an effort to ensure compliance with the department’s housing expectation, Jody independently sought housing. She searched the newspaper and internet for rental units that included utilities, but could not find one that she could afford on her income of \$365 per month. As a result, she remained in her relatives’ apartment—an apartment that the juvenile court found was “supportive” and lacking in “safety concerns.”

We conclude the record lacks clear and convincing evidence to support the finding that a move to independent housing at the time of the dispositional hearing and as a condition of reunification was in the child’s best interests.

We modify the dispositional order to delete the statement that “Jody shall obtain her own residence that is appropriate for James.”

**AFFIRMED AS MODIFIED.**