

**IN THE COURT OF APPEALS OF IOWA**

No. 0-483 / 10-0781  
Filed September 9, 2010

**IN THE INTEREST OF C.R.E. JR.,  
Minor Child,**

**L.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Decatur County, Monty W. Franklin, Judge.

A mother appeals from a juvenile court disposition review order.

**AFFIRMED.**

Leanne M. Striegel-Baker of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Lisa Hynden Jeanes, County Attorney, for appellee.

Angela Hill, Leon, for father.

Kristian Lehmkuhl, Osceola, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., Mansfield, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MILLER, S.J.**

L.D. is the mother of C.E. Jr., who was born in June 2005. L.D. appeals from an April 26, 2010 juvenile court disposition review order in a child in need of assistance (CINA) case. That order denied L.D.'s request for contempt proceedings against C.E. Jr.'s father, C.E. Sr.; ordered the CINA case closed; and retained temporary legal custody of C.E. Jr. in C.E. Sr. pending resolution of C.E. Sr.'s action in district court concerning custody of C.E. Jr. and related issues.<sup>1</sup> We affirm.

L.D. and C.E. Sr. have never been married. When C.E. Jr. was fourteen months of age and L.D. was seventeen years of age L.D. requested that C.E. Sr. leave the home in which they were living. C.E. Sr. did not do so, and L.D. therefore left. The next day C.E. Sr. left with C.E. Jr., left Iowa, and did not return with C.E. Jr. until July 2008, almost two years later.

In September 2008 three-year-old C.E. Jr. was living with C.E. Sr. when found playing outside without supervision at about noon. C.E. Sr. was sleeping after having consumed beer until about 3:00 a.m. C.E. Jr. then began living with L.D. and her husband and their new-born twins. A CINA petition was filed in early November 2008.

C.E. Jr. remained with L.D., visiting C.E. Sr. almost daily, until a December 8, 2008 adjudication hearing. As L.D. intended to contest

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<sup>1</sup> In June 2009 the juvenile court had granted C.E. Sr.'s application requesting that the juvenile court grant concurrent jurisdiction to the district court to enter orders regarding custody, visitation, and support of C.E. Jr. See Iowa Code § 232.3(2) (2009). C.E. Sr. had commenced such an action at some time before the April 26 hearing and order.

adjudication, the juvenile court rescheduled the hearing to January 12, 2009, leaving C.E. Jr. in L.D.'s care.

In December 2008 L.D.'s husband left their home in southern Iowa and moved, with the young twins, to Ames, Iowa. On December 16, 2008, without notifying the Iowa Department of Human Services (DHS), L.D. left C.E. Jr. with C.E. Sr. and moved to Ames.<sup>2</sup> C.E. Jr. has thereafter remained with C.E. Sr.

At the January 12, 2009 adjudication hearing L.D. asserted that C.E. Jr. was not a CINA, opining that C.E. Jr. would do well in the care of either herself or C.E. Sr. C.E. Sr. stipulated to the allegations of the CINA petition. The DHS case manager expressed concerns about L.D.'s possible abuse of alcohol and several reports of domestic violence between L.D. and her husband. C.E. Sr. had made significant progress in substance abuse counseling, and had a spacious, adequately furnished, properly provisioned apartment for C.E. Jr. and himself. The juvenile court adjudicated C.E. Jr. a CINA and continued him in the temporary custody of C.E. Sr., subject to DHS supervision.

At a February 9, 2009 disposition hearing the DHS and C.E. Jr.'s guardian ad litem recommended that C.E. Jr. remain adjudicated a CINA and remain placed with C.E. Sr. Despite L.D. having placed C.E. Jr. in C.E. Sr.'s care in mid-December, and having earlier testified that C.E. Jr. would be safe and well-taken-care-of in C.E. Sr.'s care, L.D. contested his continued placement with C.E. Sr. She expressed concern that C.E. Jr. might not be safe with him. C.E. Sr. had since the January hearing successfully completed another month of in-home

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<sup>2</sup> L.D. and her husband did move back to the area of their previous home in southern Iowa about two months later.

therapy and substance abuse counseling. The juvenile court continued C.E. Jr.'s adjudication as a CINA and continued him in the temporary custody of C.E. Sr.

By late July 2009 C.E. Sr. had successfully completed substance abuse counseling and treatment and had completed a "Children in the Middle" class. The DHS recommended that the CINA case be closed. However, events of July 31 caused it to change its recommendation. On that date L.D. and her husband reportedly had a party at their residence that included alcohol and marijuana use in the home with their ten-month-old twins present. An accompanying or ensuing domestic dispute between them involved the police department and a resulting order that they have no contact with each other. The events also resulted in an open child abuse assessment due to the allegations of domestic abuse and lack of supervision of the twins. The DHS changed its recommendation and recommended that C.E. Jr. remain adjudicated a CINA with temporary custody in C.E. Sr., subject to DHS supervision. C.E. Jr.'s guardian ad litem concurred in the revised recommendation. Following an August 10, 2009 disposition review hearing, the juvenile court adopted the DHS's recommendations.

In mid-December 2009 C.E. Sr. took C.E. Jr. to New Jersey, where they had earlier lived during their absence from Iowa, for a "holiday visit" with C.E. Sr.'s parents and others. The record indicates that C.E. Sr. did not seek or secure DHS permission before doing so, although approval of the DHS and C.E. Jr.'s guardian ad litem would have been granted if sought. C.E. Sr. and C.E. Jr. remained in New Jersey at the time of a January 25, 2010 disposition review hearing. It appears the hearing was continued to February 22, 2010. A service

provider's report filed February 22, 2010 states that the judge had ordered C.E. Sr. and C.E. Jr. to return to Iowa for the February 22 hearing, and a DHS report filed February 22, 2010, refers to a court order stating C.E. Sr. is to bring C.E. Jr. back to Iowa for a February 25, (sic) 2010 court hearing.

Neither C.E. Sr. and C.E. Jr. nor L.D. attended the February 22 hearing. The State requested a home study of C.E. Sr.'s home in New Jersey, stating that if the home study "comes back appropriate" the State would then again recommend closing the CINA case. L.D. requested an order that C.E. Jr. be taken into custody and returned to Iowa. C.E. Jr.'s guardian ad litem concurred in the State's recommendation. The juvenile court declined to order C.E. Jr. taken into custody and returned to Iowa, noting that the goal from the outset of the CINA proceeding had been to return C.E. Jr. to the custody of the parent or parents from whom he had been removed, C.E. Sr. in this case; C.E. Jr. had long since been returned to C.E. Sr.'s temporary custody; and there was no evidence C.E. Jr. was not safe. The court continued C.E. Jr.'s adjudication as a CINA, continued him in C.E. Sr.'s temporary legal custody, ordered the home study, and set a further review hearing for April 26.

Because the DHS did not have sole or joint custody of C.E. Jr., the New Jersey authorities conducted a "home visit," sometimes referred to as a "safety check," rather than a "home study," and provided an April 16 written report. The report found C.E. Jr. to be "happy, healthy, and well groomed." It indicated that although C.E. Sr.'s apartment was "undecorated, sparsely furnished and somewhat dreary," "all of the facilities were in working order and no safety or

health hazards were observed.” It further stated C.E. Sr. had indicated he was finishing his bachelor’s degree at Graceland College through on-line classes, with graduation expected in June; he had paid apartment rent six months in advance; and his nearby parents would help him by occasionally buying groceries. The report stated C.E. Sr.’s kitchen was minimally stocked with basic foods.

A disposition review hearing was held April 26. C.E. Sr. and C.E. Jr. did not attend. The State, joined by C.E. Jr.’s guardian ad litem, recommended that the CINA case be closed. L.D. objected to the case being closed, stating concerns about C.E. Jr.’s safety and well-being. On the day of the hearing L.D. filed an application seeking to have C.E. Sr. held in contempt of court for allegedly violating court orders of January 25 and February 22, 2010, to be present with C.E. Jr. for hearings of February 22 and April 26.

The juvenile court found that C.E. Jr. had been returned to C.E. Sr. for over one year, during that year there had been no abuse reports or safety issues that would require C.E. Jr.’s removal from his father, and the case had remained open the last six months mainly so that custody issues could be addressed pursuant to the grant of concurrent jurisdiction to the district court.<sup>3</sup> The court found that the issues leading to the CINA case had been addressed and resolved, and that it would not be in C.E. Jr.’s best interest for the case to remain open.

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<sup>3</sup> As previously noted, C.E. Sr. had earlier commenced such an action.

The juvenile court denied L.D.'s request for the initiation of contempt proceedings against C.E. Sr., finding it would not be in C.E. Jr.'s best interest to keep the CINA case open solely for the purpose of seeking to have C.E. Sr. "found in contempt of court *for failing to appear for hearing.*" (Emphasis added).<sup>4</sup> The court found that C.E. Jr. was no longer a CINA, ordered the case closed, and continued C.E. Jr. in the temporary legal custody of C.E. Sr. pending resolution of the district court custody, visitation, and support proceeding. L.D. appeals.

Our review of child in need of assistance proceedings is de novo. We review both the facts and the law, and we adjudicate rights anew. Although we give weight to the juvenile court's factual findings, we are not bound by them. As in all juvenile proceedings our fundamental concern is the best interests of the child.

*In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (citations omitted).

L.D. first claims that the juvenile court erred in denying her request that it "issue an order for rule to show cause" against C.E. Sr. She alleges that "[o]n January 25, 2010, February 22, 2010, and April 26, 2010, [C.E. Sr.] failed to appear with [C.E. Jr.] after being ordered to do so." The State urges in part that "[e]ven assuming [L.D.] can now complain about matters relating to hearings that occurred months earlier,<sup>5</sup> she could only challenge the juvenile court's refusal to hold the father in contempt by filing a *certiorari* petition."

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<sup>4</sup> Although L.D. alleged in the juvenile court and asserts on appeal that C.E. Sr. violated *orders* to attend hearings, the juvenile court spoke of him "failing to appear for hearing." L.D. has not provided any reference to a place or places in the record where we may find an order or orders of the nature she asserts the court made, and upon our diligent search of the record we have been unable to find any such written or oral order.

<sup>5</sup> We presume the State has reference to the hearings and orders of January and February 2010.

Iowa Code section 665.11 provides: *No appeal lies from an order to punish for a contempt*, but the proceedings may in proper cases be taken to a higher court by certiorari.” (Emphasis added). The statute thus proscribes appeal only when an alleged contemnor is found in contempt, and a direct appeal is permitted when an application to punish for contempt is dismissed. *State v. Iowa Dist. Ct.*, 231 N.W.2d 1, 4 (Iowa 1975). L.D.’s complaint on appeal relates to the court’s denial and dismissal of her application for contempt. We thus disagree with the State’s argument that L.D. should have utilized certiorari rather than appeal to challenge the court’s ruling on this issue.

For at least the last six months before the April 26, 2010 disposition review hearing the CINA case remained open primarily if not exclusively because of two concerns: (1) that questions regarding custody of, visitation with, and support of C.E. Jr. were not yet resolved or near resolution, and (2) that C.E. Jr. might be at risk of harm when in L.D.’s care because of recent substance abuse and domestic violence in L.D.’s home. By some time well before the April 26 hearing C.E. Sr. had brought a district court action to resolve the custody, visitation, and support questions. The allegations of substance abuse and domestic violence were some nine months old. Upon our de novo review we agree with the juvenile court that the issues leading to the removal of C.E. Jr. from C.E. Sr. and the commencement of the CINA case had been resolved. We further agree with the court that it would not have been in C.E. Jr.’s best interest, our primary concern, for the CINA case to continue. We therefore affirm on this issue.



L.D. next claims the State “failed to provide reasonable efforts to preserve the family unit between Mother and Child.” She argues that C.E. Sr.’s removal of C.E. Jr. from Iowa interfered with her visitation with C.E. Jr. She argues that the juvenile court’s denial of her request for an order that C.E. Jr. be taken into custody and returned to Iowa constituted a failure to make reasonable efforts to maintain a bond between her and C.E. Jr.

L.D.’s request for an order that C.E. Jr. be taken into custody and returned to Iowa was made on the record at the February 22, 2010 disposition review hearing. The juvenile court denied the request, stating the reasons previously noted in this opinion. Any appeal from that denial had to be taken within fifteen days of the court’s February 22 oral and written orders. See Iowa R. App. P. 6.1501-Timetable 3: Chapter 232 Child-in-Need-of-Assistance and Termination Appeals. Apparently no such timely appeal was taken, and we are therefore without appellate jurisdiction to at this late date consider that denial.

L.D. appears to also claim that the juvenile court’s denial of her application for a rule to show cause constituted a failure to require the State to provide reasonable services/efforts. We agree with the State that even assuming L.D.’s application constituted a demand for services,<sup>6</sup> the request was untimely when not made until April 26, 2010, the date of the disposition review hearing at which the court was to once again consider closing the CINA case. See, e.g., *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000) (stating, in a termination of parental rights case, “We have repeatedly emphasized the importance for a parent to

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<sup>6</sup> The application does not identify or request any service or services.

object to services early in the [CINA case] process so appropriate changes can be made.”); *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (stating, in a CINA case, “a parent has an . . . obligation to demand other, different or additional services prior to a permanency hearing,” and concluding that by not doing so the appellant had not preserved error on claims of lack of reasonable efforts). We conclude L.D. has not preserved error on her claim the juvenile court failed to require reasonable efforts by denying her application for a rule to show cause.

L.D. claims the juvenile court erred in finding there was not clear and convincing evidence of adjudicatory harm to C.E. Jr., and that it was in his best interests to close the CINA case. The court found that (1) C.E. Jr. had been returned to C.E. Sr. for over one year, (2) during that year there had been no abuse reports or safety issues presented that would require his removal from C.E. Sr., (3) the case had remained opened during the last six months mainly so custody issues could be addressed, and those issues had not yet been resolved, (4) the issue that led to the CINA proceeding had been addressed and no longer existed, (5) C.E. Jr. had been out of Iowa for over four months, and was safe and being appropriately provided for, and (6) it would not be in C.E. Jr.’s best interest for the case to remain open.

C.E. Sr. had successfully completed substance abuse treatment. He had paid six months’ rent in advance. C.E. Sr.’s nearby parents would help him financially if needed. He intended to secure employment soon, after his anticipated receipt of his four-year college degree. C.E. Jr. had a strong bond

with his father, who had provided C.E. Jr.'s care for the great majority of C.E. Jr.'s life. C.E. Jr. was, according to New Jersey authorities, "happy, healthy, and well groomed." C.E. Sr. had commenced a district court action to address custody of C.E. Jr. and related issues. We agree with the juvenile court's findings, as well as its conclusion that the CINA case should be closed, and affirm on this issue.

L.D. last claims that the juvenile court violated her rights to due process of law by "failing to enforce its Orders to appear in January, February and April 2010, because the court was no longer impartial." The State responds, in part, that L.D. has not preserved error on this claim as no such claim was ever presented to or passed upon by the juvenile court. While the State is no doubt correct, we nevertheless feel it appropriate to address L.D.'s arguments.

L.D. asserts that the judge who ordered the CINA case closed at the conclusion of the April 26, 2010 disposition review hearing, Judge Franklin, "could not be impartial and fair in the review proceedings because he presided over the majority of the case." The facts belie her assertion. Orders and transcripts of hearings show that all hearings up to the February 22, 2010 hearing, that is all hearings for the first fifteen months of the seventeen-month duration of the case, were conducted by Judge Kimes, and that Judge Franklin conducted only the February 22 and April 26, 2010 hearings.

L.D. asserts that a judge who has presided over the CINA case cannot be impartial, as the judge has seen the struggles that occur and has formed an opinion of the parents during the case. We believe, to the contrary, that a judge's

ongoing involvement in and familiarity with a CINA case is of benefit to the child or children in interest in such a case.

L.D. asserts that the juvenile court's failure to enforce its order requiring C.E. Sr. to appear with C.E. Jr. for hearings on January 25, February 22, and April 26, 2010, and its order providing visitation to L.D., shows that the court was no longer impartial. As previously noted, we have been unable to find any order requiring C.E. Sr. to appear with C.E. Jr. for such hearings. Assuming, without so deciding, that such an order or orders exist, we conclude that the juvenile court was required to exercise its discretion, in the best interests of C.E. Jr., as to whether to enforce such orders. C.E. Sr. had been C.E. Jr.'s caretaker for the great majority of C.E. Jr.'s life, and no substantial evidence indicated C.E. Jr. was at risk of harm. Attending the three hearings would have required considerable time and expense on the part of C.E. Sr. and C.E. Jr. Issues of custody and visitation were before the district court in a separate proceeding. Upon our de novo review we conclude the court did not abuse its discretion by not enforcing the orders in question.

**AFFIRMED.**