

**IN THE COURT OF APPEALS OF IOWA**

No. 0-654 / 10-1252  
Filed September 22, 2010

**IN THE INTEREST OF E.G.C. and N.C.C.,**  
Minor Children,

**C.C., Father,**  
Appellant,

**R.C., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, District Associate Judge.

A mother and father appeal from juvenile court orders requiring a visit between siblings. **AFFIRMED IN PART AND VACATED IN PART.**

Scott D. Strait, Council Bluffs, for appellant-father.

Phil R. Caniglia, Council Bluffs, for appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn M. Landon, Assistant County Attorney, for appellee.

Sara Thalman, Council Bluffs, attorney and guardian ad litem for E.G.C.

Roberta Megal, Council Bluffs, attorney and guardian ad litem for N.C.C.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**SACKETT, C.J.**

A mother and father appeal from the termination-of-parental-rights order and the CINA-permanency-review order that ordered the two children at issue to participate in a supervised visit with their two younger siblings. They contend the court did not have jurisdiction of the two younger children to compel them to participate in the visit. The parents further contend the court violated their procedural and substantive due process rights by directing them to compel the younger children to participate in the visit. We vacate the portions of the termination order and permanency review order that ordered the sibling visitation. We affirm the remainder of the orders.

**Background and Proceedings.** The older two children were removed from their parents' custody and found to be in need of assistance for having engaged in sexual acts with each other and for having physically and sexually abused their two younger siblings. Petitions to have the younger children found to be in need of assistance were dismissed by the juvenile court at the State's request.

The State petitioned to terminate the parents' parental rights to the two older children under Iowa Code sections 232.116(1)(a) and (e) (2009). A joint permanency review hearing and termination hearing was held in June of 2010. The court found the permanency goals of termination of parental rights and adoption by grandparents were not resisted by the parents, but the parents did not consent "unequivocally" to the termination. The court terminated the parents' parental rights under Iowa Code section 232.116(1)(e) (2009). The termination

order also ordered “that the children participate in a supervised visitation with their younger siblings, to be scheduled by the Department of Human Services.” In a separate permanency review order issued after the termination order, the court ordered “that the children participate in a supervised visit with their younger siblings, to be scheduled by the Department of Human Services.”

The parents filed motions to amend the termination and permanency orders, alleging the court was without jurisdiction to order the younger siblings to participate in visitation with their older siblings, and the orders violated the parents’ and the younger siblings’ procedural and substantive due process rights. The court denied both motions.

**Scope and Standards of Review.** Our review of juvenile court orders in child-in-need-of-assistance and termination-of-parental-rights proceedings is de novo. Iowa R. App. P. 6.907 (2009). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972).

**Merits.**

*Jurisdiction.* The parents contend the juvenile court had no jurisdiction over the two younger children to order them to participate in visitation with their older siblings, who had abused them. We agree. Although neither order *expressly* orders the younger children to participate in a visit with their older siblings, the provisions ordering the older children to “participate in a supervised visit with their younger siblings” *necessarily* requires the younger children to be

involved. The State petitioned to have the younger children found to be in need of the court's assistance, then later requested that the court dismiss the petitions. The court dismissed the petitions concerning the younger children, so they are not subject to the jurisdiction of the juvenile court. See Iowa Code §§ 232.61, 109 (providing for juvenile court jurisdiction in child-in-need-of-assistance and termination-of-parental-rights proceedings).

We conclude the juvenile court exceeded its jurisdiction in ordering visitation that involved the younger children. Accordingly, we vacate the following provision in both the order terminating parental rights and the order on CINA permanency review: "IT IS FURTHER ORDERED that the children participate in a supervised visit with their younger siblings, to be scheduled by the Department of Human Services."

*Procedural and Substantive Due Process.* The parents also contend the juvenile court's orders violated their own and their younger children's procedural and substantive due process rights. Because our resolution of the jurisdictional issue is dispositive of the appeal, we do not address the constitutional claims. See *In re J.A.N.*, 346 N.W.2d 495, 498 (Iowa 1984) ("We recognize a duty to avoid constitutional questions when the merits of a case may be fairly decided without facing them.").

**AFFIRMED IN PART AND VACATED IN PART.**