

**IN THE COURT OF APPEALS OF IOWA**

No. 0-831 / 10-1480  
Filed November 24, 2010

**IN THE INTEREST OF R.E., Jr., B.E., and L.E.,  
Minor Children,**

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

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother seeks reversal of an order transferring custody of her three  
children to the Department of Human Services for placement in foster care or  
with relatives. **AFFIRMED.**

Natalie H. Cronk of Law Offices of Natalie H. Cronk, Iowa City, for  
appellant mother.

David Fiester of County Public Defender's Office, Cedar Rapids, for  
appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, Bill Croghan, Assistant County  
Attorney, for appellee State.

Julie Trachta, guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

A mother seeks reversal of an order transferring custody of her three children to the Department of Human Services for placement in foster care or with relatives. She contends (1) the juvenile court violated statutory and constitutional provisions pertaining to the scheduling of hearings, (2) a “safety plan” requiring the temporary removal of the children was illegal, and (3) the record lacks evidence to support a finding that there was a substantial change in circumstances justifying a modification of custody.

*I.* The children were initially removed from the mother based on unsanitary conditions in her home. The State subsequently filed a child in need of assistance petition. Following a hearing, the district court entered an adjudication order returning custody of the children to the mother under the supervision of the Department of Human Services. The court later entered a dispositional order continuing the children’s placement with the mother.

On April 27, 2007, the juvenile court issued a second temporary removal order based on a report that the youngest child sustained a skull fracture. A hearing on this removal order was not scheduled until May 26, 2010. On that date, the State filed an application to modify the earlier dispositional order that had confirmed custody with the mother. The juvenile court postponed the May 26 hearing until August 2010. Following the rescheduled hearing, the court modified the dispositional order to place custody of the children with the department “for purposes of foster family care or relative placement.”

The mother challenges the juvenile court’s failure to schedule a temporary removal hearing within ten days of the second temporary removal order. See

Iowa Code § 232.95(1) (2009). This issue has previously been decided contrary to the mother's position. See *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994); *In re R.F.*, 471 N.W.2d 821, 823 (Iowa 1991). In *A.M.H.*, the Iowa Supreme Court specifically noted:

When the child is already under the jurisdiction of the juvenile court, the court has . . . the inherent power to “temporarily, even summarily, remove a child pending a hearing on the modification.”

516 N.W.2d at 871 (quoting *R.F.*, 471 N.W.2d at 823). The court also stated a subsequent dispositional order rendered challenges to the temporary removal order moot. *Id.*

The procedural history here is virtually identical to the history in *A.M.H.*; the children were temporarily removed and, after the removal, the juvenile court held a hearing and determined the earlier dispositional order should be modified. *Id.* at 869. Based on this history, we conclude the juvenile court did not act illegally in scheduling a hearing more than ten days after the second ex parte temporary removal order.

**II.** The mother next contends the department was without authority to prepare a “safety plan” that included the removal of the children from her home. Again, because the second temporary removal order was superseded by an order modifying the dispositional order, we conclude any error attending the temporary removal of the children cannot be remedied and is moot. *Id.* at 871.

**III.** The mother finally contends there was not a substantial change of circumstances justifying the modification of custody. On our de novo review, we disagree.

On the day the juvenile court entered its dispositional order allowing the children to remain in the custody of their mother, the mother contacted her physician to report that her youngest child had a bump on his head. An appointment was scheduled for a time two days later. At the scheduled appointment, the physician noted a four to five centimeter, “soft, squishy” raised area above the infant’s scalp. As noted, the infant was diagnosed with a skull fracture. Although the physician was unable to determine the cause of the injury or the amount of force that would have resulted in such an injury, he stated he did not recall seeing a six-month-old child with a skull fracture in his fifteen years of family practice.

The mother suggests the injury could have been accidental. We agree, as the infant had two “rambunctious” older siblings and shared space with four pit bulls. The fact remains, however, that the infant was injured while in his mother’s charge and, as noted by a child protective worker, the injury could have resulted in the child’s death. This evidence was sufficient to establish a change of circumstances warranting a modification of the dispositional order.

**AFFIRMED.**