

**IN THE COURT OF APPEALS OF IOWA**

No. 1-778 / 11-0897  
Filed October 19, 2011

**IN THE INTEREST OF C.E., C.S., J.R. Jr., J.R., and C.R.,  
Minor Children,**

**K.R., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Madison County, Kevin A. Parker,  
District Associate Judge.

A mother appeals from the permanency review order that continued placement of her children with the father and denied her request for a home study in California. **AFFIRMED.**

John Heinicke, Des Moines, for appellant mother.

Todd Miler, West Des Moines, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Julie Forsyth, County Attorney, for appellee State.

Erica Parkey, Des Moines, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**DANILSON, J.**

A mother appeals from the permanency review order that continued placement of her children<sup>1</sup> with the father. The mother contends the juvenile court erred in denying her request for a home study of her home in California through the Interstate Compact on Placement of Children (ICPC). Considering the children's ties to Iowa; the mother's decision to move to California in April 2010 without regard to visitation or contact with the children; and the fact that the children have lived with the father since the mother's relocation, we agree with the juvenile court it is in the children's best interests to remain in the father's care. We further agree that it would be contrary to the children's best interests to initiate an interstate investigation to modify their placement to California. According, we affirm the ruling of the juvenile court.

**I. Background Facts and Proceedings.**

The mother has five children with three men. The children are fourteen, twelve, ten, five, and three years old. Jason is the father of the three youngest children; the fathers of the older two children have no involvement with the family. This family has come to the attention of the Iowa Department of Human Services (DHS) several times in the past, due to "an extensive history of methamphetamine use by the parents [the mother and Jason]." The children were ordered removed from the home and placed in foster care from April 2005

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<sup>1</sup> The mother has five children: a fourteen-year-old daughter by another father; a twelve-year-old son by another father; and three younger sons (ages ten, five, and three) by the father at issue in this case, Jason. Prior to the most recent permanency review hearing, all five children had been in the care of Jason. The fathers of the oldest two children are not involved in these proceedings.

until August 2005, and again from February 2006 until May 2007. DHS and children-in-need-of-assistance cases closed in January 2008.

The family came to the attention of DHS again in June 2008, when DHS became aware the parents had begun selling and using crack and methamphetamine again. The children were removed from the parents' home in July 2008. They were placed in foster family care. By this time, the parents had separated. The children were adjudicated CINAs in September 2008.

Services were offered and received by the parents. By August 2009, the court acknowledged the children were nearly ready to be returned to the mother's care. The mother had made progress and had a home for the children to live. Meanwhile, the father was participating in family drug court, and was making great strides toward reunification with the children. The children were returned to the mother's care, and the guardian ad litem observed that this placement was going well.

By the spring of 2010, the father had completed family drug court and moved into the family residence. In April 2010, the mother moved to California without notice or reason. All five children continued living with the father. The father was employed, and appeared to be a safe and stable parent. The father's girlfriend moved into the home with her two children. The guardian ad litem observed that the father's girlfriend was a positive influence on the family, and the children were doing well in this living arrangement.

Upon the mother's move to California, the children and the father reported that mother and her extended family were engaging in "harassing, dangerous, and bizarre behavior," which threatened the welfare of the children. The mother

threatened the lives of the father and his girlfriend, and threatened to remove the children from Iowa without court approval. In April 2011, the father filed a request for an order of protection from the mother and her family. The court addressed the motion by observing that the court had “jurisdiction over these children,” and they could not be removed from Iowa unless allowed by court order.

In May 2011, a permanency review hearing was held. The mother’s attorney requested that a home study be initiated on her home in California through the ICPC. The mother’s attorney stated the mother lived at the Buddy House, attended therapy, had provided two clean UA’s, and worked thirty-hours per week at a marketing-type firm. The State resisted the mother’s request for a home study, observing the children had lived in Iowa their whole lives, and that placement in California “would be detrimental to the children.” The guardian ad litem agreed, stating “[I]t would not be in the best interests of the children to uproot them from the home that they’ve had for quite some time. I think they’re stable right now, and . . . I do not think that it would be best for them to change placement at this time.” The oldest child testified and stated, “I don’t want to live with my mom ever. I want to stay with my dad. . . I’m really proud of my dad. . . I don’t feel safe with her.”

Following the hearing, the court entered its ruling, finding in part:

The children were returned to the custody of the parents on August 6, 2009, under DHS supervision. The children and parents were to continue with services such as UA’s, substance abuse treatment, the Polk County Drug Court, and employment.

The children have been in the custody of the father since April 2010, when the mother moved to the state of California. No

evidence has been presented to the Court as to the reason for the mother's relocation in California.

The mother has requested that an interstate compact investigation be started. The Court knows of no good reason to begin the investigation. The mother voluntarily left the state of Iowa and could as easily return and again become a full-time mother to her children.

The court continued the permanency order without modification and reiterated that the permanency goal in this case "is for custody with the father." The mother now appeals.

## **II. Scope and Standard of Review.**

We review the juvenile court's decision denying the request for a home study for abuse of discretion. See *Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989) (observing that the exercise of the trial court's discretion "will ordinarily not be disturbed unless it was exercised on clearly untenable grounds or to an extent clearly unreasonable"); see also *In re State ex rel. C.N. v. Hawkinberry*, 953 So.2d 870, 876 (La. App. 2007) (concluding court did not abuse discretion in denying request for home study). The ICPC authorizes, but does not require, the court to initiate a home study. See Iowa Code § 232.158 (2009). Our overriding concern in any juvenile case is the best interest of the children. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

## **III. Discussion.**

The mother argues the juvenile court erred in not initiating a home study of her home in California. She contends she "was complying with service provider requests made by DHS." She states she was "dropping UA's while in Iowa and she had two surprise UA's while at the Buddy House in California." The mother also states she is in therapy, "meets twice a day for NA/UA issues," and "works

thirty hours a week for a marketing-type firm.” The mother realizes it may take a long time for the home study to be completed, but alleges that her social worker in the case permanency plan was in favor of her request.

We credit the mother for her progress in addressing her issues. Although at first blush, it would seem a home study should be completed upon a parent’s home even where the parent lives out-of-state. However, in this case, the evidence supports the claim that the father is a suitable caretaker and his home is suitable for the children. Moreover, the mother did not personally appear for the permanency hearing, testify by telephone, or present any evidence to give any suggestion that her home was suitable, or that she was in any position to provide care for the children.

We agree with the juvenile court that it would not be in the best interests of the children to initiate an investigation to modify their placement to California at this time. The interests of five children are at stake in this case—the oldest of which is fourteen-years-old. The oldest child testified that she does not feel safe with the mother, and expressed her desire to continue to live with the father. See *In re T.P.*, 757 N.W.2d 267, 271 (Iowa Ct. App. 2008) (considering child’s testimony in regard to what the child felt was in her best interests, even though the court ultimately reached a different conclusion). Over the past five years, the mother has not shown that she can be a safe and stable provider for these children for a period of longer than one year. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (observing that in determining a child’s best interests, “we look to the parents’ past performance because it may indicate the quality of care the parent is capable of providing in the future.”). Under these circumstances, and

until the mother actively participates in the proceedings and begins to show she can be a stable caretaker, it would be a waste of resources to initiate a home study. See, e.g., *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (“The requirement of reasonable efforts exists both to protect rights of parents and children, and provide financial incentive for states.”).

These children have spent their entire lives in Iowa. The older children are in school and involved with friends and activities. The younger children are adjusted to their daycare, and bonded with their foster family, whom they still visit regularly. The father has completed family drug court and is employed. He is meeting all case plan expectations and the children are doing well in his care. We are also concerned with the evidence in the record that the mother and her extended family have harassed, threatened, and otherwise behaved inappropriately toward the children and the father since the mother’s relocation.

Under the facts of this case at this juncture, we, like the juvenile court, see “no good reason” to begin a home study in California. Accordingly, we affirm the permanency order of the juvenile court.

**AFFIRMED.**