

IN THE COURT OF APPEALS OF IOWA

No. 2-528 / 12-0195
Filed July 11, 2012

A.R., Mother,
Plaintiff,

vs.

**IOWA DISTRICT COURT FOR
JOHNSON COUNTY,**
Defendant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A mother seeks certiorari contending the juvenile court exceeded its jurisdiction when it ordered her to repay child support. **WRIT SUSTAINED.**

Ellen R. Ramsey-Kacena, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet M. Lyness, County Attorney, and Patricia Wier, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

A mother appeals a juvenile court order requiring her to repay child support. Because we find the juvenile court does not have subject matter jurisdiction over child support, we sustain the writ of certiorari requested by the mother.

I. Background Facts and Proceedings.

The mother and the father are the unmarried parents of K.F. (born July 2007). The mother was K.F.'s primary caregiver, and the father paid child support directly from his pay check as established by the district court through the child support recovery unit.

On February 23, 2011, the State filed a petition alleging K.F. to be a child in need of assistance (CINA). After a contested hearing, the juvenile court filed an order on July 29, 2011, adjudicating K.F. a CINA under Iowa Code section 232.2(6)(c)(2) (2011).

On August 9, 2011, the mother placed K.F. with the father because she was being evicted from her apartment. The juvenile court confirmed the placement in a dispositional order dated August 24, 2011.

After the transfer of custody, the father could have requested the juvenile court provide notice to the district court that custody had been changed, and could have requested the district court enter an order suspending his child support obligation while K.F. was in his care. However, the father failed to seek suspension immediately due to some confusion regarding whether the child

support order had already been terminated.¹ A notice regarding the transfer of custody was not filed by the juvenile court until November 10, 2011, and the father's child support obligation was not suspended by the district court until November 21, 2011.

A CINA in-court review hearing was held on November 16, 2011. At the hearing, the juvenile court stated that the mother should repay the child support payments she received from the father from August until November 2011. The mother objected, but the juvenile court ordered:

[T]he child's mother shall refund to the father all child support payments she has received for support of [K.F.] from and after 8-9-11 to be repaid within 30 days of the date of this order. Failure to repay child support as ordered herein shall be punishable as a contempt of court.

The mother subsequently filed an application to expand, enlarge, or modify the in-court review order arguing the juvenile court lacked authority or jurisdiction to order a refund of child support payments. Alternatively, the mother argued the juvenile court's order was an impermissible retroactive reduction of child support. The juvenile court denied the mother's motion on January 17, 2012. The mother filed a notice of appeal. Our supreme court determined the notice of appeal should be treated as a petition for writ of certiorari and granted the writ. The case was transferred to this court.

II. Scope of Review.

In a certiorari case, our review is for the correction of errors at law. *State v. Iowa Dist. Ct.*, 812 N.W.2d 1, 2 (Iowa 2012). We examine only the jurisdiction

¹ The father apparently misinterpreted that the termination of the assignment of child support to the State equated to a termination of the support obligation itself.

of the juvenile court and the legality of its actions. Iowa R. App. P. 6.107(1)(a); *State v. Iowa Dist. Ct.*, 750 N.W.2d 531, 534 (Iowa 2008).

III. Analysis.

The juvenile court has exclusive jurisdiction over CINA proceedings. See Iowa Code § 232.61(1). As a part of this jurisdiction, the juvenile court can establish a “support obligation” on a parent to pay for the cost of foster care and services provided by DHS. *Id.* §§ 232.4, 234.39. However, the juvenile court does not have jurisdiction to establish or modify child support obligations between parents. Rather, the district court is given original jurisdiction over issues relating to dissolution of marriages and domestic relations, *id.* § 598.2, which expressly includes temporary, initial, and the modification of child support orders. *Id.* §§ 598.10(2), 598.21B, 598.21C. Accordingly, the juvenile court did not have subject matter jurisdiction to order the repayment of child support from the mother. *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006) (“Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention. Subject matter is conferred by constitutional or statutory power.” (quotations and citations omitted)).

The juvenile court does have the authority to request the district court exercise concurrent jurisdiction and adjudicate a specific issue like child support, which it did in this case when it provided notice on November 10. See *id.* § 232.3(2). The district court was subsequently able to consider the juvenile court’s entry of a dispositional order placing K.F. in the father’s custody as a

substantial change in circumstances to warrant modification of the child support order, which it did on November 21. See *id.* § 598.21C(1)(k). Although it may have taken him three months, the father had this procedure available to him, and he was able to follow it. See *also* Iowa Code § 252B.20 (setting forth another procedure to have child support suspended when the child support recovery unit is providing enforcement services). For these reasons, we sustain the writ of certiorari.

WRIT SUSTAINED.