

**IN THE COURT OF APPEALS OF IOWA**

No. 2-588 / 12-0937

Filed July 25, 2012

**IN THE INTEREST OF A.K., C.K., and K.K.,  
Minor Children,**

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

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Appeal from the Iowa District Court for Iowa County, Jane F. Spande,  
District Associate Judge.

After dismissal of CINA proceedings and termination of juvenile court jurisdiction, the mother appeals and challenges the juvenile court's imposition of a visitation schedule. **REVERSED IN PART, AFFIRMED IN PART.**

John G. Daufeldt of Daufeldt Law Firm, P.L.C., Conroy, for appellant mother.

John C. Wagner of John C. Wagner Law Offices, P.C., Cedar Rapids, for father.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**DANILSON, J.**

A mother appeals the juvenile court's imposition of a visitation schedule in its order dismissing child in need of assistance (CINA) proceedings, and thus divesting the court of jurisdiction over the parties. After dismissal of the CINA proceedings, language in the order specifying terms of visitation is mere surplusage that has no controlling effect, as it was entered without jurisdiction. We vacate the portions of the dismissal order pertaining to visitation and affirm the remainder of the order.

**I. Background Facts and Proceedings.**

The parents of A.K., C.K., and K.K. divorced in 2005. Their dissolution decree provides for joint custody with shared care of all three children. However, the mother was seriously injured in a car accident in November 2006. She was hospitalized for several months, having suffered both hip and brain injuries. The father necessarily assumed physical care of the children immediately after the accident. In 2007, the mother was deemed unable to provide care for herself or her children without assistance. However, as the mother's condition improved, she resumed regular contact with the children, including unsupervised overnight and extended weekend visits.

The Department of Human Services (DHS) became involved with the family in the summer of 2009 after allegations of abuse against A.K. by the mother. A.K., C.K., and K.K. were removed from their mother's custody on November 20, 2009, and adjudicated CINA by agreement of all parties, on

January 28, 2010. The children resided with their father,<sup>1</sup> and had supervised visitation with their mother during the pendency of the proceedings.

The district court had concurrent jurisdiction for purposes of hearing a modification action.<sup>2</sup> A November 14, 2011 district court order memorialized an agreement of the parties that in the event the juvenile proceedings were dismissed, prior orders from the juvenile court pertaining to visitation would be followed until further action in district court.

The juvenile court returned custody to the mother and found dismissal of the CINA cases warranted due to lack of progress, under Iowa Code section 232.103(4)(c).<sup>3</sup> In the order dismissing the CINA proceedings, the juvenile court noted that the last visitation schedule that had been in place during the juvenile proceedings would remain in place, pending further action by the district court. The mother appeals and challenges the juvenile court's imposition of a visitation schedule.<sup>4</sup>

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<sup>1</sup> K.K. has a different biological father who did not participate in this action, but supports placement of the children with A.K. and C.K.'s father. K.K.'s biological father resists reunification of the children with the mother.

<sup>2</sup> In a November 1, 2010 order, the juvenile court gave the district court concurrent jurisdiction to hear the father's motion to modify prior dispositional orders, provided that the district court hearing occurred after the hearing on the mother's pending motion to modify or terminate prior dispositional orders.

<sup>3</sup> Iowa Code § 232.103(4)(c) (2011):

The court may modify a dispositional order, vacate and substitute a dispositional order, or terminate a dispositional order and release the child if the court finds that any of the following circumstances exist: . . . (c) The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.

<sup>4</sup> The State does not respond to the mother's petition on appeal, as DHS did not request a visitation schedule and did not appeal the order terminating CINA jurisdiction. To the contrary, DHS moved to dismiss the CINA proceedings.

## II. Standard of Review.

Because the parent-child relationship is constitutionally protected, our review of juvenile court orders in child-in-need-of-assistance proceedings is de novo. Iowa R. App. P. 6.907 (2011); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

## III. Discussion.

The mother asserts that the visitation provisions outlined by the juvenile court are invalid, as after dismissal, the court can no longer exert influence over the subject or the parties to the case. We agree.

“Courts possess only those jurisdictional powers conferred by our constitution or legislature.” *In re Melodie L.*, 591 N.W.2d 4, 7 (Iowa 1999). Action taken by a court without subject matter jurisdiction is void. *Id.*

The State petitioned to have the children found in need of the court’s assistance, then later moved to dismiss the petitions. After the court dismissed the petitions, the parties were no longer subject to the jurisdiction of the juvenile court. See Iowa Code §232.61.<sup>5</sup> Although the juvenile court may have only tried to aid the parties until their district court proceedings concluded, the imposition of visitation terms to take effect after the dismissal of the juvenile proceedings is beyond the juvenile court’s jurisdiction. Of course, the parties remained free to stipulate in district court to prior validly entered visitation terms imposed by the juvenile court.

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<sup>5</sup> The juvenile court is a court of limited jurisdiction, with exclusive jurisdiction over CINA proceedings.

**IV. Conclusion.**

We conclude the juvenile court exceeded its jurisdiction by imposing visitation provisions in the dismissal order. We vacate the portions of the dismissal order pertaining to visitation and affirm the remainder of the order.

**REVERSED IN PART AND AFFIRMED IN PART.**