

**IN THE COURT OF APPEALS OF IOWA**

No. 2-727 / 12-1098  
Filed September 6, 2012

**IN RE R.K., S.K., J.K., and R.K.,  
Minor Children,**

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

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Appeal from the Iowa District Court for Jones County, Casey D. Jones,  
District Associate Judge.

A mother appeals the juvenile court's child in need of assistance  
disposition order. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Phil Parsons, County Attorney, and Emily Stork, Assistant County  
Attorney, for appellee.

Kelly Steele, Cedar Rapids, for father.

Craig Elliott, Anamosa, attorney and guardian ad litem for minor children.

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

**MULLINS, J.**

In this child-in need-of-assistance (CINA) proceeding, the non-custodial mother appeals the juvenile court's order placing custody of her children with the Iowa Department of Human Services (DHS) for relative or foster family care placement. The mother argues she is the least restrictive placement and the juvenile court committed prejudicial error in excluding a letter from evidence. Upon our review, we affirm.

**I. Background Facts and Proceedings**

Four children are at issue in the current case: R.L.K. (born March 1999), S.K. (born February 2000), J.K. (born May 2003), and R.K. (born April 2006). The mother and father are separated and have an extremely troubled relationship. Two years ago the father and children moved to Iowa. The mother remains in Wyoming.

The father started an intimate relationship with the mother when she was fifteen years old. At the time, he was thirty-eight years old, her legal guardian, and married to another woman. The two conceived their first child when the mother was only seventeen years old. Soon thereafter, their relationship grew abusive and became riddled with daily methamphetamine use.

This case first came to the attention of the DHS on February 1, 2012 on a report the father was not providing S.K. with adequate health care. Soon thereafter, DHS initiated a child abuse assessment. During the assessment, the father was uncooperative and threatened to blow up S.K.'s school. The father's hair stat test indicated use of amphetamine and methamphetamine.

On February 15, 2012, local authorities arrested the father. R.L.K., S.K., J.K, and R.K. were then removed from the father's home and placed with their older half-sister, Valerie, and her husband, Josh. On February 16, 2012, a DHS social worker filed an affidavit with the juvenile court regarding the father's failure to provide S.K. with asthma medication and concerns the father is using and possibly manufacturing methamphetamine.

On February 22, 2012, the State filed a child-in-need-of-assistance petition. The juvenile court held an adjudication hearing on February 28, 2012. The parties stipulated the children were children in need of assistance pursuant to Iowa Code section 232.2(6) (2011).

On February 28, 2012, the court ordered temporary placement of R.L.K., S.K., J.K, and R.K. with DHS for the purposes of relative or family foster care placement. DHS placed the children with Valerie and Josh. The juvenile court found it was not in the children's best interest to remain in the parental home. The juvenile court explained, "The father is using methamphetamine and possibly manufacturing methamphetamine. The mother's whereabouts are unknown. The mother was last known to be in the State of Wyoming."

On May 29 and May 30, 2012, the juvenile court held a contested dispositional hearing regarding the father and a combined adjudication and dispositional hearing regarding the mother. Both the mother and the father were present with counsel.

During the adjudication proceeding concerning the mother, a DHS social worker stated, "[S.K.] has reported serious physical abuse, her hair being pulled,

her being pulled down a hallway by her hair, her being slapped and hit, and then one incident where she was punched in the face several times with her mother on top of her.” R.L.K. witnessed this abuse and suffered similar abuse in front of the other children. The children self-reported witnessing their mother’s drug activity, including the mother offering R.L.K. and S.K. marijuana.

The mother testified that the father planned to use and manufacture methamphetamine with Josh. To support her testimony, the mother offered a partially legible, unsigned, handwritten letter from the father to the mother from 2010. The State and the father objected to the introduction of the letter as hearsay and a violation of the best evidence rule. The juvenile court sustained the objections and the mother did not make an offer of proof to include the letter in the record.

As a part of the adjudication proceedings, the juvenile court considered a DHS social history report dated April 21, 2012. The social history report included Josh’s criminal history with charges from 1999 to 2003, including a charge for possession of a controlled substance. The report indicated R.L.K. was aware Valerie and Josh had used methamphetamine. A DHS social worker interviewed Josh and found he was honest about his criminal charges, admitted to prior drug use, and was willing to submit to drug testing.

On June 4, 2012, the juvenile court entered an adjudication and disposition order placing the children with DHS for the purposes of relative or family foster care placement. The court found,

[p]lacement with either parent is contrary to the welfare of the children at this time. The father continues to attend substance

abuse treatment and aftercare and work on other concerns. While he is progressing rapidly towards having the children returned to him, he does not seek their immediate return at this time. The children have resided in Anamosa for almost two years with their father who has primary care through a dissolution and custody decree. When the children were removed from their father, they were all placed in the home of their older half-sister, Valerie. This home is approximately three blocks from their father's home and allows the children to be together, attend the same school as before and remain connected with their friends and family. Valerie is approved to supervise visits between the children and their father which allows for almost daily visitation. Visits between the children and their father go very well and the father is very engaged and appropriate with the children. . . .

On the other hand, the mother of the children has not seen the children in approximately two years. The testimony reveals that the mother used methamphetamine daily for years and allegedly stopped cold-turkey in August of 2010. Since then, she has received no substance abuse treatment and has not provided a sample for drug testing to any agency, although she claims to have made efforts to provide such a sample. It is very clear that the marriage between [the father] and [the mother] involved substantial and ongoing drug usage and abusive behavior by both parties. The older girls report physical and emotional abuse at the hands of their mother. The children had their first visit with their mother in almost two years on May 29, 2012 and another visit on May 30, 2012. The children were very excited to see their mother and clearly love her.

The mother now appeals the order placing temporary custody with DHS and challenges the exclusion of the father's letter.

## **II. Standard of Review**

This court reviews CINA proceedings de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We give weight to the juvenile court's findings of fact, especially the assessment of the credibility of witnesses, but are not bound by those determinations. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We review evidentiary rulings for abuse of discretion. *State v. Richards*, 809 N.W.2d 80, 89 (Iowa 2012). To the extent the juvenile court's ruling involves statutory

interpretation, we review for errors at law. *State v. Stone*, 764 N.W.2d 545, 548 (Iowa 2009).

### III. Analysis

#### A. Least Restrictive Placement

The mother contends the juvenile court erred in approving placement of the children with their half-sister, Valerie, because Valerie was not the least restrictive disposition that was also in the best interests of the children. Under Iowa Code section 232.99(4), the juvenile court must make the least restrictive disposition that is appropriate considering all the circumstances of the case. Placement with a noncustodial parent is less restrictive than with a relative or other suitable person. See Iowa Code § 232.102(1)(a) (providing legal custody of a child may be transferred to a parent who does not have physical care, other relative, or other suitable person); *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) (stating Iowa Code chapter 232 favors relative placements over non-relative placements).

The mother is a noncustodial parent. Valerie is the children's relative. Thus, placement with the mother is less restrictive than placement with Valerie. Iowa Code § 232.102(1)(a); *N.M.*, 528 N.W.2d at 97.

The less-restrictive-placement analysis does not end our inquiry. The placement must be appropriate considering all the circumstances of the case. Iowa Code § 232.102(1)(a). Our primary goal is to assure the safest and most secure placement consistent with the children's best interests. *In re A.E.O. III*, 437 N.W.2d 238, 239 (Iowa 1989).

The mother argues it is in the children's best interest to place them in her custody in Wyoming. The mother emphasizes a support system for the children in Wyoming. The mother asserts Josh's criminal history and a lack of prior contact between Valerie and the children favor placement with the mother. The mother also alleges the father planned to use and manufacture methamphetamine with Josh as recently as 2010.

The mother lives in Wyoming and has had little to no contact with the children for approximately two years. Although this limited contact may have been out of her control, the mother admits to daily methamphetamine use spanning a number of years. Both R.L.K. and S.K. reported disturbing episodes of physical and emotional abuse at the hands of their mother. Despite the mother's efforts, she had not been able to submit to drug testing nor undergo a substance abuse evaluation prior to the time of the disposition hearing.

For the past two years the children have lived in Anamosa. Valerie lives three blocks from the father's home, where the children previously lived. Although Josh has a criminal history, he has not had any criminal charges for nearly a decade. Placing the children with Valerie allows the children to attend the same school, have the same friends, have contact with their father on a regular basis, and have access to court-supervised reunification services.

The juvenile court faced a difficult decision between placing the children with their non-custodial mother or with DHS for purposes of relative or foster family care placement. The mother and children appear willing to work past their troubled history. We support those efforts. It is not, however, in the children's

best interests to place them in their mother's unsupervised care in Wyoming while efforts to reunify with the father in Iowa are progressing. Accordingly, we agree with the juvenile court's order as the least restrictive and appropriate placement considering all the circumstances of this case.

### **B. Evidence**

The mother challenges the juvenile court's failure to admit into evidence the letter purportedly written by the father concerning methamphetamine activity with Josh. Iowa Code section 232.99(2) directs the juvenile court to admit "all relevant and material evidence." Erroneous evidentiary rulings will not result in reversal unless it is prejudicial. Iowa R. Evid. 5.103(a); *In re A.S.*, 772 N.W.2d 865, 869 (Iowa Ct. App. 2007). Cumulative evidence is not prejudicial. *In re E.H. III*, 578 N.W.2d 243, 246–47 (Iowa 1998). We have long held "exclusion of evidence tending to show a certain fact is not reversible error where the claimed fact in question is fully established by other admitted evidence." *State v. Hicks*, 245 N.W.2d 319, 321 (Iowa 1976); *Kengorco, Inc. v. Jorgenson*, 176 N.W.2d 186, 189 (Iowa 1970) ("[E]xclusion of evidence is harmless error where the same evidence is subsequently admitted and considered by the finder of fact or the court.").

The mother testified as to the contents of the letter without objection. She testified about the father's plan to use and manufacture methamphetamine with Josh in 2010. The court considered the mother's testimony in conjunction with the DHS social history report. The report included Josh's prior criminal history and statements concerning his previous drug use.



The mother presented, and the juvenile court considered, substantial evidence of the letter's content. In light of the mother's limited contact with the children for two years, abusive history, and daily methamphetamine use over the course of several years, admission of the letter to corroborate the mother's testimony would not have tipped the scales of justice in favor of a finding that the mother would be an appropriate placement for the children at this time. Thus, even assuming the juvenile court erred in excluding the letter, we find the error harmless. Accordingly, we affirm.

**AFFIRMED.**