

**IN THE COURT OF APPEALS OF IOWA**

No. 3-536 / 13-0597

Filed June 26, 2013

**IN THE INTEREST OF J.C. and B.B.,  
Minor Children,**

**J.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Annette Boehlje, District Associate Judge.

A mother appeals the juvenile court's disposition and removal order.

**AFFIRMED.**

Travis M. Armbrust of Brown, Kinsey, Funkhouser & Lander, P.L.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee.

Marilyn Dettmer, Charles City, for father of B.B.

Mark Young and Crystal Ely, Mason City, attorneys and guardians ad litem for minor children.

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

**TABOR, J.**

A mother acknowledging use of methamphetamine appeals the juvenile court's order confirming her two daughters as children in need of assistance (CINA). She contends the State failed to justify the CINA adjudications and to show removal of six-year-old B.B. from her home was necessary for the child's safety. Because the mother has not yet committed to the Department of Human Services (DHS) plan for drug testing and treatment, we affirm the CINA adjudications and the juvenile court's dispositional findings.

***I. Background Facts and Proceedings***

Joleen is the mother of two children: J.C., born in April 1997, and B.B., born in August 2006. The whereabouts of J.C.'s father Dimitri are unknown.<sup>1</sup> B.B.'s father John had arranged with Joleen to share custody of B.B. before these proceedings.

The DHS opened this CINA case after receiving a report Joleen used methamphetamine while B.B. was in her care. On November 30, 2012 the social worker met with B.B. and J.C. Neither child noted any problems at home, except for J.C.'s concern about household financial struggles. The worker also met with Joleen at her home. During the visit Joleen asserted she had been sober since 2010. Joleen confirmed she would be serving a ten-day sentence for theft and J.C. and B.B. would stay with relatives. The next day Joleen reported to jail a day late and lost her work release privileges.

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<sup>1</sup> No party could determine Dimitri's current address or telephone number. Notice was given in the newspaper. He did not participate in these proceedings.

On December 5, 2012, the social worker met with Joleen in jail to discuss the drug test Joleen would be administered. Joleen was very emotional during the visit. Joleen eventually shared that she had been using methamphetamine twice a month for the past few months. On December 10, 2012, Joleen's hair sample tested positive for methamphetamine.

The social worker met with Joleen at her home after Joleen was released from jail. Joleen admitted relapsing in April 2012 and recently increasing her methamphetamine use up to three times per week. But Joleen told the social worker she did not view using methamphetamines as a negative in her life because it enables "her to stay thin and say what's on her mind." Joleen also agreed to a safety plan that included an appointment at a drug treatment center and any requested drug testing.

On January 9, 2013, the State filed a petition to declare J.C. and B.B. as CINA under Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(n) (2013). The juvenile court held a hearing on January 31, 2013, at which the parties stipulated to adjudication of the children as CINA. Joleen agreed to participate in substance abuse treatment and provide random drug samples for testing.

On March 28, 2013, the court held a dispositional hearing. In a temporary removal order, the court found Joleen had been "dodging drug testing." Also since the prior hearing Joleen lied to her substance abuse providers about submitting to random drug testing and did not comply with treatment. Out of ten scheduled drug tests, Joleen provided two samples that tested negative, but

failed to show up for the other eight screenings. Joleen attended three substance abuse treatment sessions but arrived more than one-half hour late for two of the sessions and “appear[ed] to have minimal investment.” Joleen also failed to schedule mental health services and occasionally failed to ensure B.B. arrived at school on time.

In an April 2, 2013 dispositional order, the court continued the CINA adjudication for J.C. and B.B. J.C. stayed with Joleen, and B.B. was placed with the child’s father, John. The court ordered Joleen to participate in random drug testing, substance abuse treatment, and mental health treatment as well as follow all recommendations and demonstrate progress toward therapeutic goals. Joleen filed a timely appeal.

## ***II. Standard of Review***

We review CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We give weight to, but are not bound by, the juvenile court’s factual findings. *In re M.A.F.*, 679 N.W.2d 683, 684 (Iowa Ct. App., 2004). The primary concern for the court is the best interest of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

## ***III. Analysis***

### **A. Would B.B. Face Harm if Returned to Joleen’s Care?**

Joleen argues the record does not contain proof B.B. had suffered or was imminently likely to suffer harm while in her care. Iowa Code section 232.2(6)(c)(2) defines a child in need of assistance as an unmarried child “who has suffered or is imminently likely to suffer harmful effects as a result of . . . : the

failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." A parent using methamphetamine while caring for a child is known to be a significant danger and pose great harm to that child. See *State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005); see also *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012) (recognizing drug use can "render a parent unfit to raise children").

The juvenile court summarized the grounds for removing the children from Joleen's care during the dispositional hearing: "[Y]ou don't score 20 percent on a test and pass . . . . The whole reason this case came about is because of your drug use . . . . And if you aren't going to stop using meth, that is certainly your choice; but we're not going to keep a six-year old or the seventeen-year old in that kind of situation."<sup>2</sup>

The record contains evidence Joleen not only has used methamphetamine but has no qualms about her drug use and even enjoys its effect on her life. Joleen also initially lied about her drug use. Based on the eight missed drug tests, her tardiness and absences from substance abuse meetings, and her reluctance to seek mental health treatment, we agree with the juvenile court's assessment that Joleen has yet to recognize her methamphetamine use is destructive and hinders her ability to parent. Accordingly, we find removing the

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<sup>2</sup> The juvenile court does not explain why J.C. remains in Joleen's care. But we note the original complaint to DHS was that Joleen was using methamphetamine while parenting B.B. Also J.C. is seventeen-years-old and able to independently meet many of her own needs, even if designated as CINA. On the other hand, six-year-old B.B does not have the same ability to care for herself and to protect herself from harm.

younger child from the home was proper and will help guard the child from potential risk until Joleen demonstrates her commitment to recovery.

**B. Did the Juvenile Court Adopt the Least Restrictive Disposition?**

Joleen argues neither J.C. nor B.B. should be considered CINA and contests the disposition of the case. Iowa Code Section 232.99 requires a juvenile court “make the least restrictive disposition appropriate considering all the circumstances of the case.” The least restrictive option is that the judgment is suspended pending the completion of imposed terms and conditions. Iowa Code § 232.100. Placing the child with the child’s parent is the next least restrictive option. *Id.* § 232.101.

In the original CINA adjudication, the court adopted the first option of imposing terms and conditions. Joleen failed to meet those conditions upon review at the March 28, 2013 proceeding. The court then imposed additional terms and conditions for Joleen and placed B.B. with John.

Joleen has not yet demonstrated her ability to safely care for B.B. Until Joleen is able to make significant progress toward controlling her substance abuse and abide by the DHS safety plan, we agree both children should remain CINA and the least restrictive disposition is for J.C. to remain in Joleen’s custody and for B.B. to be placed full-time with John.

**AFFIRMED.**