

IN THE COURT OF APPEALS OF IOWA

No. 6-702 / 06-0287
Filed November 16, 2006

**TABITHA KROGMEIER and JARRET
KROGMEIER, Minor Children, By and
Through MICHELLE D. WARTH,
f/k/a MICHELLE D. KROGMEIER,
Their Natural Mother,**
Petitioners-Appellants,

vs.

**WILLIAM J. KROGMEIER and
CHRIS KROGMEIER,**
Respondents-Appellees.

Appeal from the Iowa District Court for Des Moines County, John G. Linn,
Judge.

Michelle Warth appeals from a district court ruling refusing issuance of a
writ of habeas corpus. **APPEAL DISMISSED.**

Steven E. Ort of Bell, Ort, & Liechty, New London, for appellant.

Marlis J. Robberts of Robberts Law Office, Burlington, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Michelle and William (Bill) Krogmeier are the parents of Tabitha and Jarrett Krogmeier. Following a modification of the parties' decree of dissolution, Bill was awarded physical care of the children, subject to reasonable visitation with Michelle. After receiving notice from Bill of his activation to active duty, Michelle filed a petition for writ of habeas corpus, requesting that the district court issue a writ of habeas corpus requiring Bill to bring the parties' minor children before the court and thereupon to place the children with her during the period of time Bill is on active duty. The district court filed an order refusing to issue the writ, and Michelle appealed.

Bill and Chris, Bill's current wife, filed a motion to dismiss the appeal, arguing the appeal is moot because (1) Bill has returned from military service overseas and has been released from active duty and (2) modification and contempt proceedings are now pending in district court. Michelle resists the motion to dismiss, arguing the issue presented on appeal is likely to reoccur because Bill has not been discharged from the military.

A case is moot "if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Sear v. Clayton County Zoning Bd.*, 590 N.W.2d 512, 514 (Iowa 1999). "Our test of mootness is whether an opinion would be of force or effect in the underlying controversy." *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 540 (Iowa 1997) (citation omitted). In other words, we must ask whether our decision in this case will "have any practical legal effect upon an existing controversy?" *Id.* (quoting 5 Am. Jur. 2d *Appellate Review* § 642, at 321 (1995)).

We conclude Michelle's appeal is moot. Bill has returned from his military service overseas; thus the issues involved in the appeal no longer exist, and any decision on the merits would have no practical legal effect. Moreover, proceedings now pending in the district court will address the issue of custody of the children.¹ We recognize that we may decide an otherwise moot case if matters of public importance are presented and the problem is likely to reoccur, *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 679 (Iowa 1998), but we conclude the issue presented on appeal extends no farther than the particular facts of this case.

APPEAL DISMISSED.

¹ While the modification and contempt proceedings are not technically part of the record on appeal, we may consider matters that have transpired during the appeal for the limited purpose of determining mootness. *In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992). Michelle does not deny Bill and Chris's assertion that modification and contempt proceedings are now pending in the district court.