

**IN THE COURT OF APPEALS OF IOWA**

No. 6-996 / 06-1758  
Filed December 28, 2006

**IN THE INTEREST OF T.D.,  
Minor child,**

**W.L.C., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A mother appeals a juvenile court review order and an order regarding  
certain photographs. **AFFIRMED.**

Jesse A. Macro, Jr., Des Moines, for appellant.

Judd Kruse, Boone, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Annette Taylor, Assistant  
County Attorney, for appellee State.

Kathryn Miller, Juvenile Public Defender, Des Moines, for child.

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

**VAITHESWARAN, J.**

W.L.C. appeals (1) a juvenile court review order continuing placement of her daughter with the child's father and (2) an order requiring her attorney to give the court certain photographs of the child that W.L.C. subpoenaed from a physician. Our review of both orders is de novo.

**I. Review Order.** T.D. was adjudicated a child in need of assistance based on her mother's efforts to document sexual abuse by the child's father. T.D. remained in her mother's care following the adjudication. In April 2006, the juvenile court modified the placement order and transferred care of T.D. to her father. This action was based on W.L.C.'s decision to videotape the child's genitalia. W.L.C. appealed that order and our court, in a lengthy split decision, affirmed. *In re T.D.*, No. 06-0765 (Iowa Ct. App. Oct. 25, 2006).

We will not again summarize the extensive evidence presented to the court at and before the placement modification hearing. As the juvenile court correctly noted, only evidence adduced after the date of that hearing was relevant at the review hearing. See *In re Welcher*, 243 N.W.2d 841, 844 (Iowa 1976) (“[A] review hearing should never be, as it developed here, a re-adjudication of the original neglect. If it were, a parent might never recover his or her child.”).

The sole question at a review hearing is “whether there has been a change of circumstances since the original hearing which would warrant returning the child to the parent.” *Id.* The burden is on the parent to prove this change of circumstances, but the level of proof is only by a preponderance of the evidence. *Id.* See also Iowa Code § 232.102(9) (2005) (requiring termination of

the placement and return of the child to the home “if the court finds by a preponderance of the evidence that the child will not suffer harm”).

W.L.C. contends “she does not pose[] a threat or danger of further adjudicatory harm to the child.” Focusing only on evidence generated at the October 2006 review hearing or in the six months preceding it, we disagree.

The first act we consider is similar to the act that precipitated the placement modification order. At a motion hearing in August 2006, the juvenile court ordered all pictures of T.D.’s genitalia, whether photographed or videotaped, not to be “disseminated to anyone without a court order.” Notwithstanding this order, W.L.C. independently subpoenaed color photographs of T.D.’s genitalia from a physician who had earlier examined the child. When the State learned of this subpoena, an assistant county attorney moved for a protective order. The court granted the motion, stating “[s]aid subpoena was sent in violation of this court’s order prohibiting dissemination of photographs of the child’s genitals . . . . It is the order of the court that the photographs . . . shall be immediately delivered to the undersigned.” W.L.C.’s attorney complied with the order. He did not and does not dispute the juvenile court’s determination that his client violated an explicit order designed to shield T.D. from continued exposure of her genitalia. This violation is evidence that T.D. would continue to suffer adjudicatory harm if returned to her mother’s care.

The second act we consider occurred during a supervised visit W.L.C. had with T.D. During the visit, W.L.C. accompanied T.D. to the bathroom. She pulled one pant leg off T.D. and, according to the visitation supervisor, “opened her legs up as far as they could go.” T.D. was approximately five years old at the time.

Although the visitation supervisor “did not observe [W.L.C.] investigating [T.D.’s] genitalia,” she reported “it was very concerning due to [W.L.C.’s] past behaviors.” We agree with this assessment. The child in need of assistance action was premised on the same type of behavior. Therefore, we agree with the juvenile court that the child would continue to suffer adjudicatory harm if returned to W.L.C.’s care.

In reaching this conclusion, we have considered certain initial signs of improvement in W.L.C.’s reunification efforts. T.D.’s therapist stated T.D. made reference to both parents during therapy “and her remarks have always been positive.” Similarly, a service provider who supervised visits between W.L.C. and T.D. stated “[g]enerally the visits between [W.L.C.] and [T.D.] go very well.” She continued, “[T.D.] greatly enjoys spending time with her mother and brothers and there is a lot of affection exchanged throughout these visits. [W.L.C.] is very nurturing with [T.D.] and very much appears to want to spend time with her daughter.” And, in the month following the placement modification hearing, W.L.C.’s therapist stated,

[A]t this point, no significant barriers are noted in the therapeutic work. [W.L.C.] has indicated that she no longer is focused on being proactive with respect to protecting her daughter from possible sexual abuse and believes that these matters are out of her hands now. She is mostly focused on having her daughter returned to her care.

He concluded, “it is my recommendation that [W.L.C.] be allowed to have increased visitation with her daughter to assist in determining her level of appropriateness with her daughter and the possibility for return to her care.”

While these positive developments boded well for reunification, they were ultimately overshadowed by W.L.C.'s insistence on pursuing the types of invasive acts that experts said would cause T.D. harm. There is no question that W.L.C. has shown herself to be a loving and nurturing parent. However, there is also no question that W.L.C. has refused to heed numerous warnings to discontinue her investigation of T.D.'s genitalia. For that reason, we affirm the juvenile court's review order.

***II. Order Regarding Photographs.*** At the review hearing, W.L.C.'s attorney indicated he had complied with the order requiring him to turn over the color photographs subpoenaed by W.L.C. He asked the court not to return the photographs to the physician, but, instead, to place them "with the other photographs that the court has under seal." On appeal, W.L.C.'s attorney contends "the photographs should be deemed work product." This issue was not raised and accordingly, has not been preserved for our review. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Therefore, we will not consider it.

**AFFIRMED.**