

**IN THE COURT OF APPEALS OF IOWA**

No. 7-119 / 07-0034  
Filed February 28, 2007

**IN THE INTEREST OF W.W. Jr. and M.W. III,  
Minor Children**

**R.F., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,  
District Associate Judge.

Mother appeals the district court decision adjudicating her sons children in  
need of assistance. **AFFIRMED.**

John Heinicke of Kragnes, Tingle & Koenig, P.C., Des Moines, for  
appellant mother.

Daniel Northfield, Des Moines, for father of W.W. Jr.

Randall Jackson, Des Moines, for father of M.W. III.

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

Michael Scorci of the Youth Law Center, Des Moines, attorney for  
children.

Amanda Demichelis of Demichelis Law Firm, Chariton, guardian ad litem.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

Roletta appeals juvenile court order adjudicating her two sons children in need of assistance (CINA). Roletta also appeals the court's decision to place both children out of the family home. We affirm.

**I. Facts and Prior Proceedings**

Roletta is the mother of Maurice, born in 1994, and WyVonn, born in 1996. Roletta has numerous health problems. She has been diagnosed with lupus, five forms of arthritis, degenerative bone, joint, and disk disease of the spine, and she also suffers from an unknown terminal illness. She is in constant pain and takes thirty-one different medications for her various illnesses. Despite her significant health problems, Roletta raises both children on her own.

In June 2006 Roletta tested positive for THC. Roletta claimed the THC results were not her fault because a neighbor had placed marijuana in her spaghetti. In August 2006 she was involuntarily hospitalized due to concerns she was using unprescribed medications. Roletta tested positive for opiates and THC when she was admitted to the hospital. While at the hospital, Roletta signed a consent form for the temporary removal of her sons from her custody. WyVonn was placed with his maternal grandmother, but Maurice, due to behavioral difficulties, was placed in a youth shelter.

The State filed a CINA petition on August 29, 2006, alleging both children were in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) (children are likely to suffer harm due to parent's failure to exercise care in supervising the children) and 232.2(6)(n) (parent's mental capacity, condition, or drug abuse results in child not receiving adequate care) (2005). After a

contested hearing, the court found the children to be in need of assistance as alleged in the petition. The court also continued the current placement as established by the temporary custody order and set a date for a dispositional hearing.

A contested dispositional hearing was held on December 22, 2006. The juvenile court concluded Roletta was not “forthright” in her testimony and agreed with the Iowa Department of Human Services’ (DHS) recommendation that both children should continue in their current out-of-home placements.

On appeal, Roletta<sup>1</sup> challenges both the adjudicatory finding and the order of disposition.

## **II. Standard of Review**

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court’s factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

## **III. Merits**

**Adjudication.** Roletta claims there is insufficient evidence in the record to support a finding that the children were in need of assistance under chapter 232. She claims the State failed to prove the children have suffered, or were imminently likely to suffer, harmful effects as a result of her failure to supervise them. She also contends the State failed to provide evidence of *observable harm* to the children resulting from her alleged drug abuse.

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<sup>1</sup> The fathers of the children are not a party to this appeal.

Maurice made several disturbing allegations to the DHS social worker. He claimed Roletta (1) smokes marijuana, (2) sells prescription drugs out of the family home, (3) keeps numerous loaded guns in the family home even though she is a convicted felon, (4) associates with a “needle addict,” (5) injects her friends with illegal substances in front of him, (6) hits him in the head, (7) curses at him, and (6) leaves both children alone for hours. Maurice also described an incident where a man entered the home, punched him in the face, and hit Roletta with a baseball bat. Maurice also reported that his mother has taught him how to hide a body in case she ever had to kill someone.

While most of these allegations are contradicted by WyVonn, many of the allegations are corroborated by other evidence. For example, WyVonn told the DHS social worker that he had recently discovered needles in the basement of his home.<sup>2</sup> Roletta’s sister confirmed that Roletta had guns in the home but they were removed prior to the social worker’s arrival. She also indicated that Roletta kept a “completely messy home” and that she “was so ‘out of it’ that she could not take care of herself.” Roletta denied that she kept guns in the home, but confirmed that she had a prior felony conviction for bank robbery. She also corroborated Maurice’s statements regarding the home invasion and admitted that on one occasion some of her friends “shot her up” with unprescribed drugs. Roletta also tested positive for marijuana on two separate occasions during the summer of 2006.

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<sup>2</sup>All of Roletta’s thirty-one medications are taken orally.

We agree that Roletta cannot exercise a reasonable degree of care in supervising her children when she abuses both legal and illegal substances. In addition, the needles, firearms, and her dangerous cocktail of thirty-one medications, marijuana, and unprescribed medication produces a very hazardous environment for her two children. Not only was it illegal for her to possess firearms, see Iowa Code § 724.26 (stating a convicted felon who knowingly possesses a firearm is guilty of a class "D" felony), but it also presented an immeasurable risk to her children. The court was correct in taking action before serious harm occurred. See *In re D.T.*, 435 N.W.2d 323, 330 (Iowa 1989) (stating that CINA statutes seek to prevent future harm to children as well as to address past harm, juvenile courts need not wait until children actually suffer harm before acting to further their best interests). We therefore affirm the court's decision to adjudicate both children CINA.

***Disposition.*** Roletta contends the court erred in finding the least-restrictive disposition was to keep Maurice in the youth shelter and WyVonn with his maternal grandmother. She cites the DHS social worker's initial recommendation that WyVonn be returned to her care as evidence of the court's error.

Following a dispositional hearing, the juvenile court must make "the least restrictive disposition appropriate considering all the circumstances of the case." Iowa Code § 232.99(4). The alternative dispositions are listed in sections 232.100 to 232.102 "in order from least to most restrictive." *Id.* "Whenever possible, the court should permit the child to remain at home with the child's parent, guardian, or custodian." *Id.* § 232.102(5)(a).

Our review of the evidence convinces us the current placement is the “least restrictive placement disposition appropriate” under the circumstances before us. Iowa Code § 232.99(4). While the social worker did initially indicate reunification with WyVonn was appropriate, she concluded that such reunification would be premature. Her primary concern was that Roletta had still not completed a psychosocial evaluation and she had not yet received the results from Roletta’s substance abuse evaluation.

The social worker’s recommendation, when coupled with Roletta’s continuing argument that the children should not have been adjudicated CINA in the first place, convinces us reunification is premature. Roletta is still unable to recognize that she has a substance abuse problem and that this problem creates a dangerous environment for her children. While Roletta has started down the proper path towards reunification, we agree that it is premature to place either child with her at this time. See *D.T.*, 435 N.W.2d at 330 (“[W]e think it is appropriate to gauge from the parent’s past performance what might happen if a child is returned rather than temporarily removed.”).

#### **IV. Conclusion**

After considering the children’s best interests and giving due deference to the juvenile court’s credibility assessments, we conclude the juvenile court did not err in adjudicating WyVonn and Maurice CINA and in continuing the current placement.

**AFFIRMED.**