

**IN THE COURT OF APPEALS OF IOWA**

No. 7-924 / 07-1672  
Filed December 12, 2007

**IN THE INTEREST OF J.S. and J.S.,  
Minor Children,**

**C.L.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Winneshiek County, Alan D. Allbee, Associate Juvenile Judge.

The mother appeals from the juvenile court's ex parte temporary removal, adjudicatory, and dispositional orders and ruling on her Iowa Rule of Civil Procedure 1.904(2) motion. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant mother.

Mark Anderson, Cresco, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Andrew F. Van Der Maaten, County Attorney, and Stephen Belay, Assistant County Attorney, for appellee State.

Karl Knudson, Decorah, for minor children.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

**HUITINK, P.J.**

The mother appeals from the juvenile court's ex parte temporary removal, adjudicatory, and dispositional orders and ruling on her Iowa Rule of Civil Procedure 1.904(2) motion. We affirm.

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

C.L.S. is the mother of the two children, J.S., age five, and J.S., age three. Both were removed from the mother's care pursuant to a March 29, 2007 ex parte removal order. The order was issued based on allegations that the mother was using methamphetamines and refused to submit to definitive hair stat testing or allow the children to be similarly tested. Post-removal testing of the younger child indicated she had been continuously exposed to methamphetamines for the ninety-day period prior to removal. The older child's tests were negative. The disparate test results were attributed to the younger child's closer and more frequent contact with the mother as well as the older child's shorter hair style. Although the mother eventually agreed to the requested hair stat testing, the test could not be performed because she had shaved her head and wore a wig. According to the mother, she shaved her head because of head lice infestation and continued to shave her head and wear a wig as a matter of personal preference. Iowa Department of Human Services (DHS) employees familiar with the mother's appearance at the time of removal believed she was not wearing a wig at that time. The mother further claimed she could not produce the wig because her dog ate it. On May 22, 2007, the juvenile court adjudicated both children as children in need of assistance (CINA) on multiple grounds, including Iowa Code sections 232.2(6)(b) (abuse and neglect), (c)(2) (lack of supervision),

and (o) (presence of illegal drugs in child's body) (2007). The mother's post-trial rule 1.904(2) motion, claiming the juvenile court erroneously shifted the burden of proof concerning her denial of substance abuse to her, was denied. The juvenile court's September 10, 2007 dispositional order placed the children with the mother, subject to supervision by DHS.

On appeal, the mother challenges the sufficiency of the evidence supporting the juvenile court's removal, adjudicatory, and dispositional orders. She also claims the trial court erroneously shifted the burden of proof to her concerning her denial of substance abuse.

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

Our scope of review in CINA proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law and adjudicate the parties' rights anew. *Id.* We give weight to the juvenile court's findings of fact, especially its credibility determinations; however, we are not bound by them. Iowa R. App. P. 6.14(6)(g). The State has the burden of proving the grounds by clear and convincing evidence. Iowa Code § 232.96(2). "Clear and convincing evidence means no serious or substantial doubt exists about the correctness of the conclusions drawn from the evidence." *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa Ct. App. 1995). Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

## ***III. Ex Parte Removal Order.***

Initially, we address the State's argument that any issues concerning the validity of the temporary ex parte removal order are moot. We agree. "Any error committed in granting the temporary ex parte order cannot now be remedied." *In*

*re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994). “We cannot go back in time and restore custody based on alleged errors in the initial removal order.” *Id.*

#### ***IV. Sufficiency of the Evidence.***

Our de novo review requires us to review the facts as well as the law and adjudicate rights anew on those issues properly presented on appeal provided those issues have been raised and error, if any, preserved in the trial court proceedings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977). Whether the issue raised concerns the trial court’s allocation of the burden of proof or the sufficiency of the evidence supporting the juvenile court’s adjudicatory order, our task is essentially the same. We review the record to determine whether the State has proved by clear and convincing evidence any of the grounds relied on by the trial court in adjudicating these children as CINA.

The mother’s challenge to the trial court’s adjudicatory order is solely premised on the State’s failure to prove by clear and convincing evidence that she used methamphetamines or that the presence of the drug in the younger child’s body was a direct and foreseeable consequence of her acts or omissions. Contrary to the mother’s claims, we find the State has met its burden of proof.

The most notable evidence supporting our conclusion includes the mother’s history of methamphetamine abuse, as well as her admission to methamphetamine abuse at or near the time the children were removed from her care. Our conclusion is further supported by the younger child’s positive hair stat test indicating her continuous exposure to methamphetamines within the ninety-day period preceding her removal. Lastly, we note the negative inferences

resulting from the mother's implausible explanation for shaving her head and refusal to submit to timely and definitive hair stat testing.

Parents who have chronic substance abuse problems present a danger to themselves and their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993).

Indeed,

[t]his danger is recognized daily in our juvenile courts, which are often forced to terminate the parental rights of those who are addicts precisely because their continued drug abuse poses a danger to their children. . . . Meth affects a person even after the drug has left the person's body. The after-effects are pervasive and staggering—much more so than with other drugs such as alcohol or marijuana.

. . . The dangers of leaving one's children in the custody of actively using methamphetamine addicts cannot be denied. No parent should leave his [or her] small children in the care of a meth addict—the hazards are too great.

*State v. Petithory*, 702 N.W.2d 854, 858-59 (Iowa 2005) (citation omitted). We accordingly affirm on this issue.

Because the foregoing is entirely dispositive of all the issues raised on appeal, we need not address the mother's remaining argument concerning the dispositional order. The juvenile court's order adjudicating these children as CINA is accordingly affirmed.

**AFFIRMED.**