

**IN THE COURT OF APPEALS OF IOWA**

No. 8-294 / 08-0435

Filed June 25, 2008

**IN THE INTEREST OF E.V., Jr.,  
Minor Child,**

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

**E.V., Sr., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother and father appeal the juvenile court's dispositional order in a child in need of assistance case. **APPEAL DISMISSED.**

Maria Ruhtenberg of Whitfield & Eddy, P.L.C., Des Moines, for appellant mother.

Andrea M. Flanagan of Sporer & Flanagan, P.C., Des Moines, for appellant father.

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

Leah Gjertson and Jerry Foxhoven of Drake Legal Clinic, Des Moines, for minor child.

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

**HUITINK, J.**

A mother and father appeal the juvenile court's dispositional order in a child in need of assistance case.

At the February 26, 2008 dispositional hearing, the juvenile court agreed with all the parties that E.V. Jr. should be returned to his father's custody subject to Iowa Department of Human Services supervision. The juvenile court ordered both parents to submit to hair stat testing at the parents' expense. The juvenile court's February 28, 2008 dispositional order returned E.V. Jr.'s custody to his father subject to DHS supervision and found the disposition ordered as the least restrictive disposition under the circumstances. Notably, the juvenile court's order did not mention hair stat testing or the reason why it was ordered.

On appeal, the father claims

- I. The Court erred in ordering that [he] provide a hair follicle sample for drug testing because the State presented clear and convincing evidence that the need for removal was no longer necessary as the child was not at risk to suffer further adjudicatory harm, no evidence was present to indicate a suspicion that E.V. Sr. was using illegal substances and the Court's order did not comply with the requirements set forth in Iowa Code § 232.106.
- II. The court erred in ordering that [he] be required to pay for the costs associated with hair follicle drug testing when [he] was deemed to be indigent and said test was not medically necessary.

The mother claims "[t]he court erred by ordering that [she] submit to a hair follicle test at her own expense because such an order is an unreasonable burden on [her] and not the least restrictive disposition available."

On April 28, 2008, we found the record was insufficient to evaluate the reasonableness of the juvenile court's decision in ordering the parents to submit to hair stat testing at their expense. *See Lessenger v. Lessenger*, 258 Iowa 170,

175-76, 138 N.W.2d 58, 61 (1965). Therefore, we remanded with instructions to the juvenile court to take further evidence and make appropriate findings of fact concerning the necessity, costs, and the parents' ability to pay the costs of hair stat testing.

On remand, the juvenile court in detail listed the reasons why it ordered the parents to submit to hair stat testing at their own expense. However, it stated "the purpose of the original order can no longer be achieved as no testing now can provide the information sought." We understand the juvenile court to state that its order requiring the parents to undergo hair stat testing at their own expense is no longer necessary. As this was the only issue on appeal that has now been rendered moot, we dismiss the appeal.

**APPEAL DISMISSED.**