

**IN THE COURT OF APPEALS OF IOWA**

No. 9-363 / 09-0515  
Filed June 17, 2009

**IN THE INTEREST OF J.S., Minor Child,**

**R.S., Mother,**  
Appellant.

---

Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A mother appeals from a juvenile court dispositional order confirming her  
nine-year-old child to be a child in need of assistance. **AFFIRMED.**

Nancy A.S. Trotter, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Andrea Vitzhum, Assistant  
County Attorney, for appellee.

Victoria Meade, West Des Moines, attorney and guardian ad litem for  
minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Rosalind, the mother of nine-year-old J.S., appeals from a March 2009 juvenile court dispositional order confirming J.S. to be a child in need of assistance (CINA) and continuing his custody in the Iowa Department of Human Services (DHS) for placement in family foster care. We affirm.

J.S. was removed from the physical custody of his mother and placed in the legal custody of the DHS for placement in family foster care. The removal occurred as a result of Rosalind and her live-in paramour, referred to in the record as “Johnny” and “Johnie,” being arrested and jailed when cocaine, drug paraphernalia, and evidence of drug sales was found in the home occupied by them and J.S. J.S. was present at the time the home was searched, the drugs and evidence of drug dealing was found, and the arrests occurred. J.S. has since removal remained in the custody of the DHS, placed in family foster care with his great aunt and her husband.

J.S. was adjudicated a CINA in early February 2009. The adjudication was pursuant to Iowa Code sections 232.2(6)(c)(2) (2009) (child who has suffered or is imminently likely to suffer harm as a result of failure of parent or other household member to properly supervise child) and (n) (child whose parent’s imprisonment or drug or alcohol abuse results in child not receiving adequate care). Following a mid-March 2009 dispositional hearing, the juvenile court confirmed J.S. to be a CINA, and continued his custody in the DHS for family foster care placement. Rosalind appeals.

Our review of child in need of assistance proceedings is de novo. We review both the facts and the law, and we adjudicate rights

anew. Although we give weight to the juvenile court's factual findings, we are not bound by them. As in all juvenile proceedings, our fundamental concern is the best interests of the child.

*In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (citations omitted).

Rosalind claims the juvenile court erred in its dispositional order confirming J.S. to be a CINA. She points out that there is no evidence she has continued to use drugs, or has ever used them around J.S.

Rosalind has taken some positive steps since J.S.'s removal. She is in treatment for substance abuse, with a history that includes not only the current drug charges but also February 2007 arrests for operating while intoxicated and possession of drug paraphernalia. Rosalind is employed full time and has part-time jobs as well. She has stable housing. Her combination of supervised and semi-supervised visitations with J.S. are going well.

Johnny, who is not J.S.'s biological father but is the only father he has ever known, has made some progress as well. He is working, enrolled in outpatient substance abuse treatment with negative tests for drug use, and appears to be successfully combating his drug addiction.

Other evidence, however, supports the juvenile court's finding that J.S. remained in need of out-of-home placement, its conclusion that the court's aid was still needed, and its resulting order confirming J.S. as a CINA. Rosalind knew that Johnny was not to have unsupervised contact with J.S. without DHS approval, but allowed such contact to occur without seeking or securing that approval. Although Rosalind had several urinalyses that were negative for drug

use, she had missed several such tests and missed ones are considered positive for drug use. Rosalind had missed visits by in-home service providers.

Despite Johnny's recent drug use, recent exposure of J.S. to drugs in the home, and evidence of possible drug dealing, Rosalind did not feel that J.S. needed to be protected from Johnny, stating, "He's never done anything to harm [J.S.]." The trial date on Rosalind's drug charges had been continued to May 2009, at the same time as the trial date for Johnny's charges, leaving the question of her future availability to J.S. unclear.

We agree with and affirm the juvenile court's challenged findings, conclusion, and resulting order.

**AFFIRMED.**