

**IN THE COURT OF APPEALS OF IOWA**

No. 1-170 / 11-0137  
Filed March 30, 2011

**IN THE INTEREST OF M.P. and C.J.,  
Minor Children,**

**S.J.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother appeals the removal of her two children from her custody.

**AFFIRMED.**

Cory J. Goldensoph, Cedar Rapids, for appellant mother.

Mark D. Fisher of Nidey, Wenzel, Erdahl, Tindal & Fisher, Cedar Rapids,  
for appellee father of M.P.

Robert W. Davison, Cedar Rapids, for appellee father of C.J.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, and Lance Heeren, Assistant  
County Attorney, for appellee State.

Brandy R. Lundy of Lundy Law Office, attorney and guardian ad litem for  
minor children.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

**VAITHESWARAN, P.J.**

A mother appeals the removal of her two children from her custody. She contends the record lacks clear and convincing evidence to support the juvenile court's determination that continued placement with her posed an imminent danger of harm to the children.

The pertinent facts are as follows. The mother's first child, born in 2004, became the subject of a child-in-need-of-assistance petition in 2007 based on several circumstances, including a confirmed child abuse report against the mother. This child initially stayed with his paternal grandmother but was later placed in foster care. His mother, who struggled with substance abuse, successfully completed treatment in May 2008 and stated she was ready and willing to resume custody.

The mother's second child was born in 2008. Two days after his birth, he was temporarily removed from the mother's care based on hospital reports that she was not attending to him. The juvenile court later ordered both children returned to the mother's custody.

In mid-2010, the mother failed to submit to random drug testing, raising concerns that she was not maintaining her sobriety. On questioning by a service provider, she admitted to one instance of marijuana use.

The court reviewed the matter in late 2010 and concluded the mother would need to enter an inpatient drug treatment program. The court further ruled, "The children shall remain in the custody of their mother, under the protective supervision of the Department of Human Services, conditioned upon

the mother's successful completion of the Heart of Iowa [drug treatment] Program." The court scheduled another review hearing for January 2011.

In the interim, a service provider reported that the mother was "kicked out of the Heart of Iowa [program] because of an altercation with another client." It was also noted that the mother's whereabouts were unknown and her "lack of stability for the boys is a big concern." The service provider additionally stated that the mother relapsed during the previous reporting period.

A department employee similarly commented on the relapse, noting that it occurred while the mother was on a pass from the Heart of Iowa facility. The employee explained that, while on the pass, the mother left the children with her own mother who was the subject of pending child endangerment charges and was precluded from having contact with the children. Significantly, the children's mother moved in with her mother after leaving the Heart of Iowa program. Despite the safety concerns this raised, the department recommended that custody of the children remain with the mother under the protective supervision of the department. The department reasoned that, following her discharge from Heart of Iowa, the mother underwent a substance abuse evaluation, sought intensive outpatient treatment, and followed up with mental health treatment.

On the day of the January 2011 hearing, the children's guardian ad litem filed a report with the court. She expressed "many concerns" about the mother's changed circumstances. She noted that the mother "was allowed to have the children in her care with the condition that she remained at Heart of Iowa under previous court order" and the mother "was very aware of the expectations as to her remaining at Heart of Iowa." The GAL continued,

It is concerning to me that with knowing the orders of the court regarding her children, she disobeyed the orders and left without giving any notice or being in contact with DHS. Her actions and choices do not show good judgment in regards to the welfare of her children.

The GAL nonetheless “tentatively concur[red] with the recommendations of the department.”

At the January 2011 review hearing, the juvenile court acknowledged receipt of the reports cited above and admitted them into the record. Based on the mother’s decision to leave the Heart of Iowa treatment program without department approval as well as her decision to move in with her own mother, the court concluded the children were no longer “safe in their mother’s care” and protective supervision by the department was not “sufficient to allow the children to safely remain in their mother’s care.”

The mother questions whether the juvenile court could spontaneously reject the recommendations of the professionals charged with monitoring the children’s progress. Iowa Code section 232.103(1) (2009), governing the modification of dispositional orders, answers that question. It allows a court “upon its own motion” to modify a dispositional order. Iowa Code § 232.103(1); *see also In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994) (“When the child is already under the jurisdiction of the juvenile court, the court has . . . the inherent power to ‘temporarily, even summarily, remove a child pending a hearing on the modification.’” (citation omitted)); *In re R.F.*, 471 N.W.2d 821, 823 (Iowa 1991) (“We believe it is implicit in the power of the juvenile court in monitoring its prior CINA orders to temporarily, even summarily, remove a child pending a hearing

on the modification.”). The court may do so “for good cause shown.” Iowa Code § 232.103(5).

The juvenile court considered the evidence presented by the department and found that it did not support the department’s recommendation to have the boys remain with their mother. On our de novo review, we concur in the court’s assessment and conclude good cause for the modification was shown. We affirm the order modifying the children’s placement.

**AFFIRMED.**