

Burden of proof is on the State.
 Burden is clear and convincing.
 "[N]o serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence."

The Court of Appeals review is de novo.
 "to minimize the risk of an erroneous deprivation of the parent's fundamental liberty interest in raising his or her child."

COURT OF APPEALS OF IOWA
 No. 17-0024, Filed April 19, 2017
 IN THE INTEREST OF D.J. and A.J.

Practice Point: The State only needs to prove one ground for TPR.

The father's rights were terminated under 232.116(1)(f) and (l). F is removal for 12/18 months and cannot be returned. (l) is severe substance abuse-related disorder, which has numerous requirements (diagnosis, finding of dangerousness, prognosis).

While he disputed the finding of (f), he did not address the finding on (l). The court did not entertain the father's arguments pertaining to (f) since (l) was unchallenged and it only needs one ground for TPR.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0257, Filed June 7, 2017
 IN THE INTEREST OF M.M.

Practice Point: A parent must present an appealable issue

CINA was based on a single domestic violence event between the mother and the father. M.M. was removed, and the parents continued their relationship; the mother lied to DHS about the relationship.

The mother did eventually leave the father and moved to Missouri for a fresh start. She got a job, did her treatment, had a baby and continued having visits with M.M. Her therapist and drug counselor both reported compliance with treatment. The mother had a baby, whom she kept in her care, and she had unsupervised visits with an older child.

Reversed in part & affirmed in part.

COURT OF APPEALS OF IOWA
 No. 17-0257, Filed June 7, 2017
 IN THE INTEREST OF M.M.
(revised)

Practice Point: A parent must present an appealable issue

Here is the father from the same case. He appealed asking only that his TPR be reversed if the mother's were reversed, which it was. The Court of Appeals did not consider his appeal since he did not present any issues on appeal.

The Court of Appeals did reverse the mother's TPR based on her positive progress and that CINA was based on a single DV event.

Reversed in part & affirmed in part.

COURT OF APPEALS OF IOWA
 No. 16-2002, Filed February 22, 2017
 IN THE INTEREST OF B.R.

Practice Point: It is the appellant's obligation to produce the record.

A father appeals from CINA adjudication grounds and placement, but no record is made and the father does not attempt to replicate the record.

Father also appeals disposition (continued removal). There is a record, but it shows that the father was continuing his relationship with a woman who had tried to stab him, which led to CINA in the first place.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0042, Filed March 8, 2017
 IN THE INTEREST OF K.P.

Practice Point: It is the appellant's obligation to provide a transcript.

Mother appeals her TPR based on not having funding to pay for her mental health evaluation and a finding of aggravated circumstances leading to discontinuation of reasonable efforts.

She did not provide a transcript in support of her appeal, and the finding of the Juvenile Court was affirmed.

Affirmed.

Preservation

COURT OF APPEALS OF IOWA
 No. 17-1028, Filed September 15, 2017
 IN THE INTEREST OF J.S. et al.

Practice Point: Issue must be raised at trial to be preserved on appeal.

Mother is involved in a domestic violence event, and the police find methamphetamine. Removal and CINA Petition. The mother files a Motion prior to disposition contesting a number of issues, but at the disposition hearing "she" (her attorney?) requests that the motion be postponed until a later date. The mother then acquiesces to the recommendations.

The mother appeals the recommendation of continued removal because the circumstances that led to removal have been cured, but the Court of Appeals does not consider her arguments because her motion was not heard at disposition. The issues were not heard and ruled upon, so they were not preserved.

Disposition affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0256, Filed April 5, 2017
 IN THE INTEREST OF F.B., et.al.

Practice Point: Issue must be raised at trial to be preserved on appeal.

Father appeals one of many grounds for CINA adjudication: 232.2(6)(b). This ground requires a finding of non-accidental injury, and it can be a precursor to TPR under part (d). In this case, the child evidenced egregious injury. One child had a rash over the entire area covered by his diaper, and it was raw and bleeding. Another child had sores on his hips almost to the bone, which a doctor opined was due to the parents using duct tape to hold diapers on. Court affirms.

At adjudication the father also disputed a finding that there was domestic violence in the home. He did not challenge a recommendation for domestic violence classes, however. On appeal, he raises a challenge to the classes, but the Court of Appeals does not consider his argument since it is not preserved.

Adjudication affirmed.

COURT OF APPEALS OF IOWA
 No. 17-2127, Filed March 22, 2017
 IN THE INTEREST OF O.H. and V.H.

Practice Point: Issue must be raised at trial to be preserved on appeal.

These parents had extensive drug histories and domestic violence in the home. After their child were removed, they had a new baby and did not report the birth to DHS. That child was also removed.

At TPR, the father argued that he should be granted additional time for reunification. At appeal, the father argued that the State failed to establish grounds for TPR by clear and convincing evidence. He also argued that DHS did not make reasonable efforts towards reunification. The Court of Appeals did not entertain either argument because the father was raising the issues for the first time on appeal.

Affirmed.

Due Process

COURT OF APPEALS OF IOWA
 No. 17-1455, Filed May 5, 2017
 IN THE INTEREST OF BA.

Practice Point:
 Due process = notice +
 opportunity to be heard +
 presence of counsel

At the time of the TPR hearing, the mother was incarcerated for violating probation related to drug possession. She filed a request that the Juvenile Court order she be transported for trial. The Juvenile Court complied, but the Department of Corrections asked the court to reconsider. It declined. The DOC appealed to the Supreme Court, which reversed the Juvenile Court order. The mother appeared by phone.

She appealed based on a due process violation perpetrated by the DOC.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0955, Filed August 16, 2017
 IN THE INTEREST OF NK, and D.O.

Practice Point:
 Due process = notice +
 opportunity to be heard +
 presence of counsel

A Petition for TPR as to N.K. was filed on January 30, 2017 to be heard on April 11, 2017. Later, on March 22, 2107 a Petition for TPR as to D.O. was filed. The mother was not served on the second Petition until five days before trial.

The mother's former attorney had requested that the trials be combined so as to reduce the mother's stress, but the mother's new attorney did not agree. The mother raised a due process objection at trial, which the court overruled. The Court of Appeals affirmed based on the mother's former counsel having notified the mother of the upcoming trial. The Court of Appeals found that the mother had actual notice of the trial for D.O.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 16-1856, Filed April 5, 2017
 IN THE INTEREST OF KW.

Practice Point:
 Due process = notice +
 opportunity to be heard +
 presence of counsel

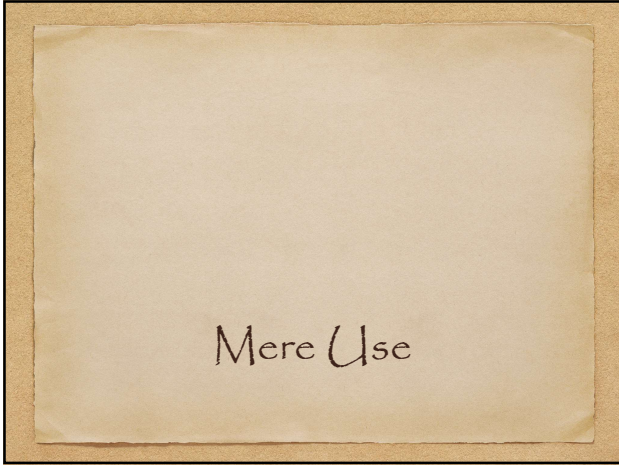
This mother was found unresponsive in a parking lot. She did not know where her 2-year-old was or who was caring for him (It was a 13-year-old girl in a hotel room.). She has longstanding drug and mental health issues and had rights to her older three children terminated.

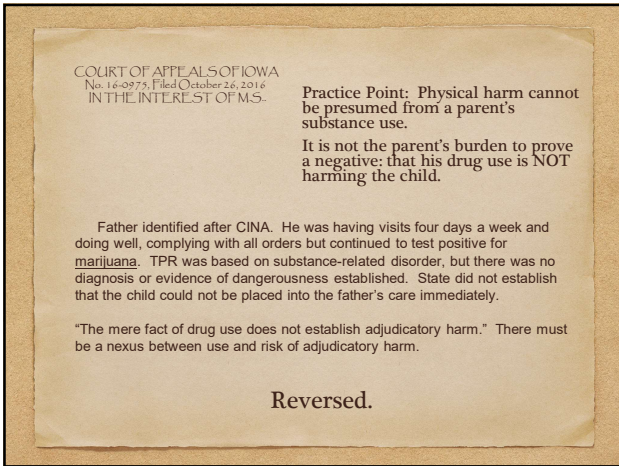
At the time of TPR trial the mother was actively exercising visitation. She complied with both drug and mental health treatment, but there were concerns about her alcohol use and association with a sex offender.

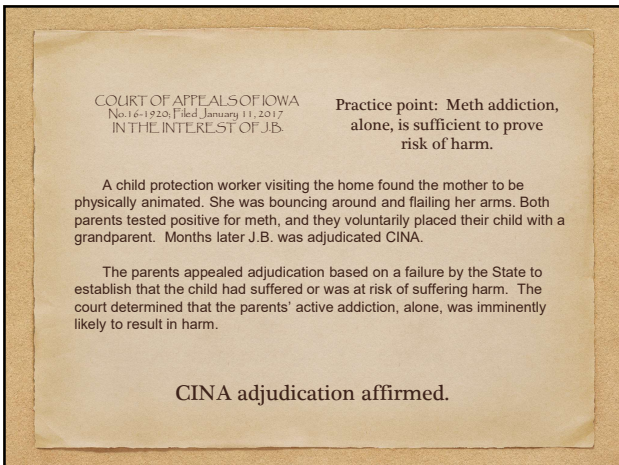
The court put a 2-hour limit on the TPR trial, and many of the mother's witnesses were not heard. Her attorney asked that letters from the witnesses be admitted, but the court refused. The court gave each party one minute for closing.

"This opportunity to be heard must be 'granted at a meaningful time and in a meaningful manner.'"

Reversed.







COURT OF APPEALS OF IOWA
 No. 17-1536 Filed December 6, 2017
 IN THE INTEREST OF J.S. et al.

Practice point:
Meth addiction, alone, is sufficient grounds for TPR.

Children are removed from a mother with a long history of meth addiction. The younger two are placed into foster care, and the oldest is placed with his father. The mother obtained evaluations, attended treatment and had positive visits with her children, but she continued to provide positive hair tests. She reported that she was not an active user and provided 29 negative urine screens, but they were not randomly administered.

The mother argued that the State had not shown a nexus between her alleged (She also challenged the test results.) drug use and safety concerns for the children. The court determined that her long-standing meth addiction, in itself, establishes potential harm to the children.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-1197 Filed October 11, 2017
 IN THE INTEREST OF J.M.

Practice point:
Marijuana addiction, alone, is not sufficient grounds for TPR.

Young mother had recently lost two friends to suicide and had also lost her job due to a medical issue. She was "self-medicating with marijuana". When her child was adjudicated CINA, the baby was one year old and the mother was 19. Mother made "significant progress towards reunification": breaking up with her boyfriend, doing all recommended treatment, obtaining employment (full time and part time). Despite her successes, the mother tested positive for marijuana throughout her court involvement.

TPR was filed and granted under part (e), failure to maintain significant and meaningful contact, and part (l), severe substance-related disorder with dangerousness and negative prognosis.

The mother attended 99% of her three weekly visits, and they went well. She continued to attend all treatments. She was not a danger to herself or others; DHS had no safety concerns, and there was no reason the child could not returned.

"[T]he State failed to prove by clear and convincing evidence the nexus between marijuana use and harm to the child."

Reversed.

Relative Care

COURT OF APPEALS OF IOWA
 No. 17-2159, Filed February 8, 2017
 IN THE INTEREST OF E.N.

Practice Point: TPR of one parent is at court's discretion.

Child is removed from the care of both parents, but after removal only the father engages in services. The child is returned to the father's care, only. The mother is incarcerated at the time of TPR.

On appeal her only argument is that the court need not TPR her since the child is with the father.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0506, Filed June 21, 2017
 IN THE INTEREST OF C.W. and L.W.

Practice Point: Juvenile Court can freely make some custodial decisions.

These parents were married but separated. The children came to court attention when their mother did not pick them up from daycare. The father "agreed to keep the children in his home," and they were placed with him. The parents were granted concurrent jurisdiction, but did not litigate custody in District Court. The mother made significant progress and moved to have the children 'returned to her care'; DHS testified that there were no longer any safety concerns with the mother.

The mother appeals continued placement with the father. She argues that there is no justification for continued "out of home placement" with the father, but the children were not removed from a "single home". The father had equal custodial rights at removal.

"[A] child placed with a parent who has full custodial rights differs from a situation where the court "transfer[s] custody of a child from a custodial parent to a noncustodial parent."

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0098, Filed April 5, 2017
 IN THE INTEREST OF B.T.

Practice Point: Juvenile Court can freely make some custodial decisions.

Mother and father had a history of DV that was outlined in their divorce decree, which awarded custody of the children to the mother. The children were removed from her care upon her arrest on felony drug charges; they were placed with the father. A year later the children were still in the father's care, but the Juvenile Court had repeatedly denied his requests for concurrent jurisdiction.

At permanency, the mother was living with her parents and was employed full time. DHS and GAL objected to returning the children to their mother. The mother's relationship with the children had faltered, and they were resisting visitation.

The court HELD that the children could not be returned to the mother because of the risk of emotional harm, and the mother argued on appeal that emotional harm is not adjudicatory harm.

232 empowers the court at permanency to transfer sole custody from one parent to another. Return to the mother was not in the children's best interest.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-0826, Filed July 19, 2017
 IN THE INTEREST OF R.J. and X.W.

Practice Point: Juvenile Court can freely make some custodial decisions.

DHS became involved based on the mother's heroin and cocaine use. The children were removed and both placed with the younger child's father. The mother did well and began a two-month transition for the children to come home; however, during this time DHS learned about various deceptions. The mother returned to supervised visits. At permanency, all professionals (including GAL) recommended against the children being returned.

The Juvenile Court returned the children to the mother citing a decrease in the risk of adjudicatory harm. The mother's deceptions had not hidden information that put the children at risk.

The father appeals, but the Court of Appeals notes that the Juvenile Court made its finding based on its assessment of the children's best interest.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 1-0289, Filed May 17, 2017
 IN THE INTEREST OF XV. and P.V.

Practice Point: Side bar RE deception

TPR filed on both parents, but the court denied the petition and established a guardianship in relatives who had consistently provided care. The case was held in the Juvenile Court despite the guardianship for the purpose of DHS arranging supervised visitation.

Mother appealed the permanency order that required her visitation to be supervised. There had been alleged medical abuse (Munchausen's by Proxy) by the mother; however, it was later determined that the effected child actually did have substantial medical concerns. The mother was found to be "deceptive" about the child's medical history. Given the child's medical needs, the mother's deception could be harmful.

Affirmed.

COURT OF APPEALS OF IOWA
 No. 17-1451, Filed December 6, 2017
 IN THE INTEREST OF E.C.

Practice Point: Juvenile Court can freely make some custodial decisions.

Mother had a long history with DHS stemming from her inability to care for her children. In January, four children were removed secondary to physical abuse and inadequate care. They went to shelter and then foster care. In May the father requested summer visitation with E.C., and he had five weeks awarded to him. In July he moved to modify placement. After a positive home study, the Court placed the child with the father.

On appeal the mother contends that placement with the father, in Missouri, will hinder reunification efforts. DHS had already established a plan for phone and video contact as well as in-person visits. Father was employed full time, was attending school activities and medical appointments. "More than the mother has done for her child" in three years. And, 232 favors relative placement.

Affirmed.

COURT OF APPEALS OF IOWA
No. 17-1965, Filed November 22, 2017
IN THE INTEREST OF RF.

Practice Point: Relative-care preference is not absolute.

Child was removed from the mother due to substance abuse, DV and mental health concerns. Father was incarcerated and remained so. The child was initially placed with the paternal grandmother, but she thwarted reunification efforts. The child was moved to a foster home. The father offered two other family members to serve as placements. Both placement options testified "merely" that they were able and would be happy to care for the child. DHS had concerns about both homes, and the mother had a good relationship with the foster parents.

Child's best interest is in reunification, and the foster home "gives us the best chance to achieve that goal".

Affirmed.

COURT OF APPEALS OF IOWA
No. 17-0406, Filed May 17, 2017
IN THE INTEREST OF LK.

Practice Point: Court's discretion excluding relative placement must be reasonable.

Infant tested positive for methamphetamine and morphine at birth. With the parents' consent, the baby was placed with a paternal aunt and uncle. Adjudication was postponed with the admonition that the placement provide drug screens "today". The relatives did drug tests the day before the continued Adjudication date, but the results were not back at hearing. The Court removed the child from the relatives' care deeming their failure to test on the prior adjudication date a positive test and citing "dishonesty" about visits with the parents.

DHS communication with the relatives was by voice message. The aunt testified that the message did not include a deadline for complying. For the next three days DHS did not return calls from the aunt for clarification. The family completed testing on the same day that they heard back from DHS (and they were negative). As for visits, the relatives had initially been approved to supervise visits, and they may not have been informed when that approval was withdrawn.

Reversed as to placement.

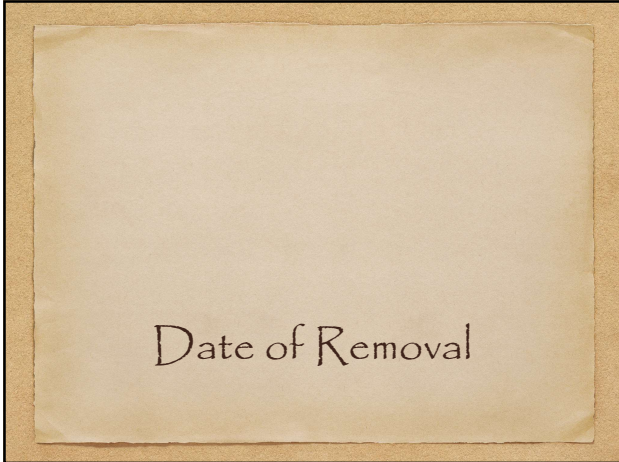
COURT OF APPEALS OF IOWA
No. 17-0078, Filed April 19, 2017
IN THE INTEREST OF BT and BT.

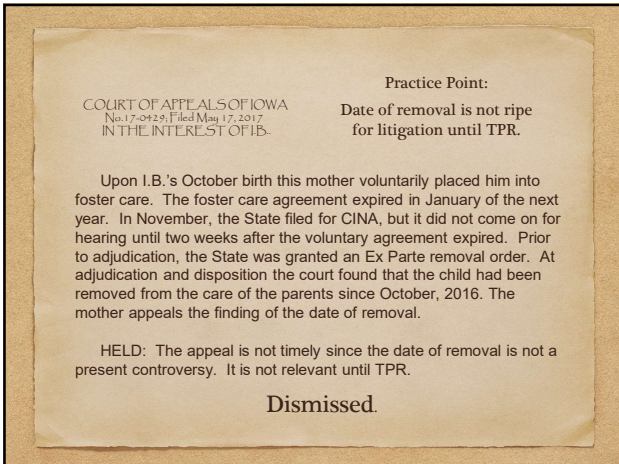
Practice Point: Legal custody is a term of art.

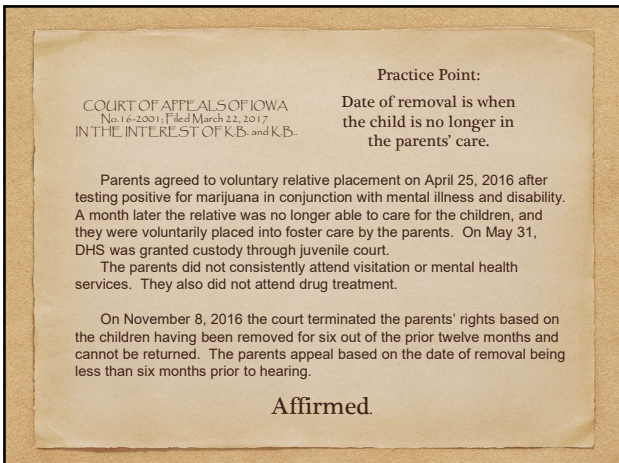
Incarcerated father appeals his TPR based on discretionary consideration: relative placement. He also appeals his children's placement with their maternal grandparents rather than their paternal great-grandparents.

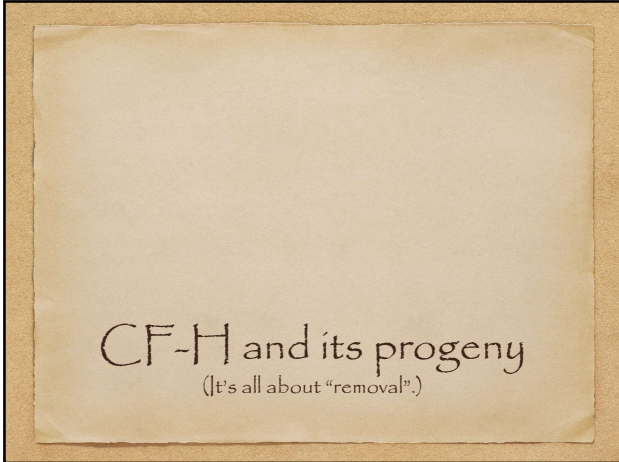
The Court of Appeals found that although the Court can decline to terminate if a child is in the "legal custody" of a relative, placement is not "legal custody"; the children are in the legal custody of DHS. Even if the relatives did have legal custody, the court's discretion was not unreasonable.

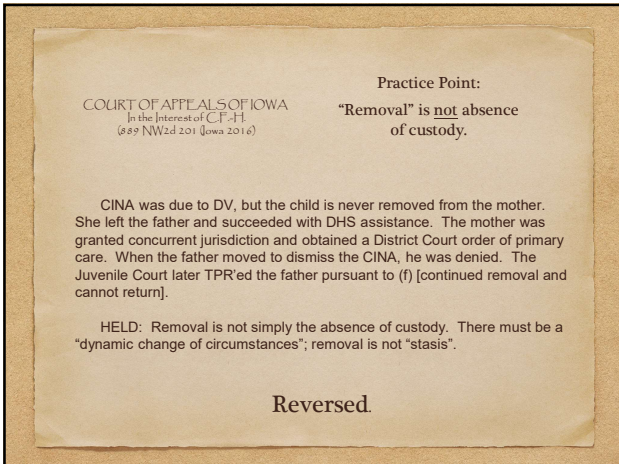
Affirmed.

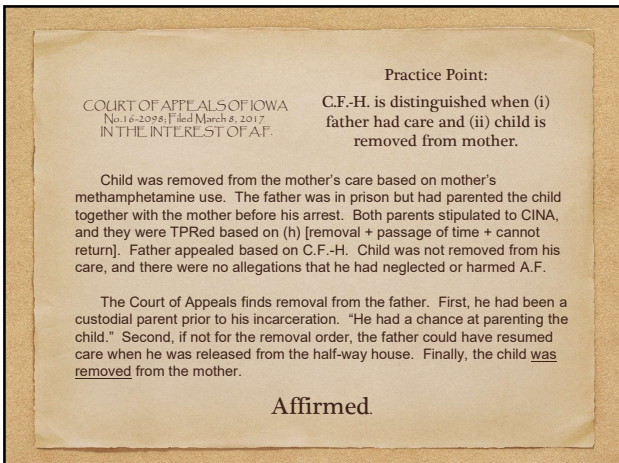












COURT OF APPEALS OF IOWA
No. 16-2187; Filed March 22, 2017
IN THE INTEREST OF Z.G.

Practice Point:
Removal from one =
removal from both.

Child was born with all sorts of drugs in his system and was removed with mother's consent. Father was incarcerated at the time of removal and at all points during CINA and TPR; therefore, he never resided with the child and never had an opportunity for care. Remember: in C.F.-H, the court noted that the child was never "removed" from the father because of his lack of physical custody; removal is not stasis.

Court of Appeals HOLDS "removal of the child from the mother is sufficient to support termination of the father's rights" because the supreme court has interpreted the word 'parents' to mean the singular or the plural.

Affirmed.

COURT OF APPEALS OF IOWA
No. 17-0584; Filed May 17, 2017
IN THE INTEREST OF K.H.

Practice Point:
Removal from one =
removal from both.

State appeals dismissal of a TPR Petition.

Father was incarcerated shortly after the child's birth, and he never had physical custody. At ten months K.H. was removed from his mother due to drug use. Removal order specified "from the care and custody of his mother... and his alleged father". At TPR the trial court dismissed the petition as to the father based on C.F.-H.

Court of Appeals HOLDS that the process of the removal order distinguishes these facts from C.F.-H. "The formal removal of the child from the father effected a "dynamic change of circumstances" as envisioned in C.F.-H. AND, the same conclusion would have been reached even if the order did not refer to the father at all.

Reversed.

COURT OF APPEALS OF IOWA
No. 17-1461; Filed December 6, 2017
IN THE INTEREST OF J.E.

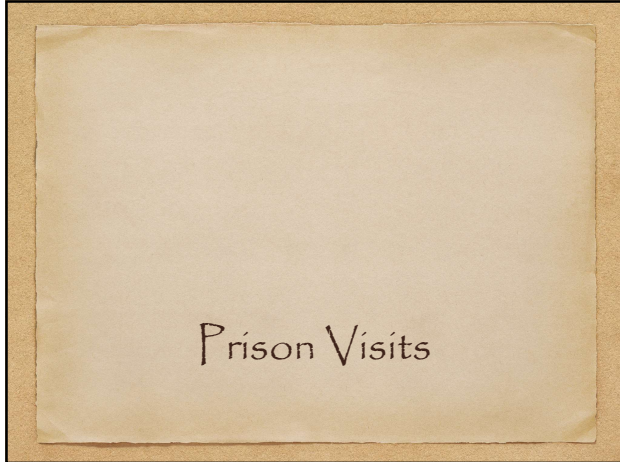
Practice Point:
K.H. stands for
Removal from one =
removal from both.

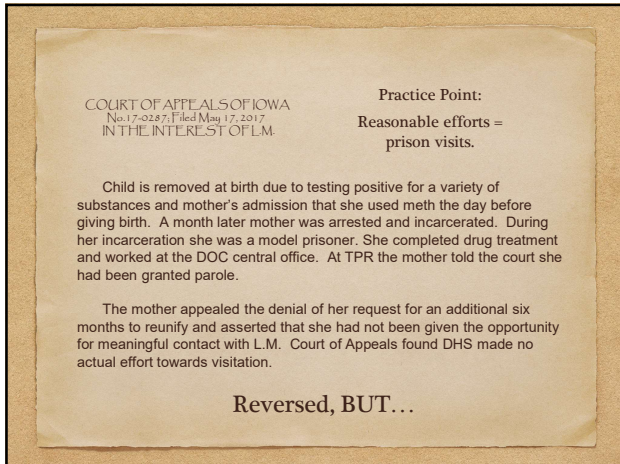
Father is incarcerated and continued to be throughout. Child was removed from mother due to her parenting while under the influence of methamphetamine. She consented to removal.

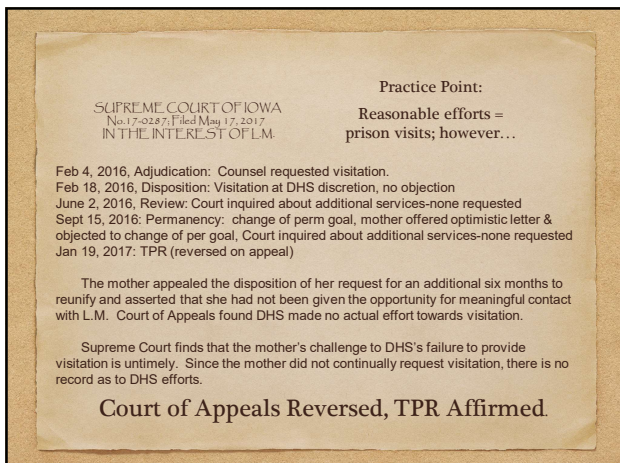
DHS made efforts to arrange visitation with the father but was unable to due to prison rules: Visits could not occur until the father completed a DV class. Although he was on the waiting list for the class, he was put on hold because of his misconduct in prison. Father did not provide any support and did not try to make any connections with J.E.

Father appeals based on C.F.-H. and that child was not removed from his care. Affirmed based on K.H.

Affirmed.







COURT OF APPEALS OF IOWA
 No. 16-1919, Filed January 11, 2017
 IN THE INTEREST OF S.P. and K.P.

Practice Point:
 The court cannot delegate,
 even to the children.

At the inception of this case in May, the mother was arrested for felony possession, and her teenage children were placed with relatives. In August, the mother's attorney requested visitation; however, the children were resistant to it. The Court agreed to "move more slowly". By disposition in October, which was not attended by the children, there had been no visitation. "The children did not wish to have any." The Court found that "reasonable efforts have been made..." and the mother appealed that finding.

In five months the only efforts made had been to "encourage" the children to have contact. No plans for therapeutic visitation had been made.

DHS must have a definitive plan with a goal of effecting visitation OR there must be a showing that it is not in the children's best interest. Court cannot delegate its role to a third party, including the children, in determining if and how visitation should proceed. The Court can also compel the children to attend hearings.

Reversed as to reasonable efforts.

COURT OF APPEALS OF IOWA
 No. 17-0009, Filed April 9, 2017
 IN THE INTEREST OF M.C.

Practice Point:
 State may withhold
 visitation if not in child's
 best interest.

Father was incarcerated and remained so throughout. Mother voluntarily placed M.C. in foster care, and both parents rights were terminated pursuant to (h). The father does not present a C.F.-H. argument, but it would not have been successful due to K.H. Instead, father argues reasonable efforts because he did not have any visits with the child.

The father's conviction was for a sexual offense involving a child, and the father had only seen his child a few times prior to the voluntary placement. DHS determined visitation was not in the child's best interest.

Affirmed.
