

IN THE COURT OF APPEALS OF IOWA

No. 4-438 / 93-1791

**FILED**

NOV 28 1994

CLERK SUPREME COURT

J.E.H., Grandmother,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR HENRY COUNTY,

Defendant.

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Appeal from the Iowa District Court for Henry County,  
Gary J. Snyder, Judge.

J.E.H. seeks certiorari review of a judgment of the district court revoking A.T.F.'s release of custody in the minor child C.M.F. and dismissing the petition for termination of parental rights.

**WRIT ANNULLED.**

Mitchell L. Taylor of Cray, Goddard & Miller,  
Burlington, for plaintiff.

Susan Dulek, Legal Services Corp., Iowa City, for  
defendant.

Cynthia H. Danielson of the Danielson Law Office, P.C.,  
Mt. Pleasant, guardian ad litem for minor child.

Considered by Danielson, C.J., Cady, J., and Perkins,  
S.J.\*

\*Senior judge from the Fifth Judicial District serving  
on this court by order of the Iowa Supreme Court.

**DONIELSON, C.J.**

J.E.H. filed a notice of appeal from the underlying district court proceedings. On March 22, 1994, the Iowa Supreme Court entered an order in which it found J.E.H. lacked standing to appeal, but it concluded her notice of appeal would be considered as a petition for issuance of a writ of certiorari. The supreme court determined the action raised a sufficient question concerning the application of the burden of proof by the district court and certiorari was granted. Upon our review of the parties' arguments, case law and the applicable statutory provisions, we conclude the district court did not act illegally in its application of the burden of proof and the writ is annulled.

**I. STANDARD OF REVIEW**

Certiorari lies when a district court has exceeded its jurisdiction or has acted illegally. Whitlock v. Dist. Court for Fayette County, 497 N.W.2d 891, 893 (Iowa 1993). Illegality exists when the findings on which the court has based its conclusions of law do not have substantial evidentiary support or when the court has not applied the proper rule of law. Id. Our review is at law and not de novo. Zimmermann v. Iowa Dist. Court for Benton County, 480 N.W.2d 70, 74 (Iowa 1992). The factual findings of the district court are binding upon us if supported by

substantial evidence, but its conclusions of law are not.  
Id.

## II. RELEASE OF CUSTODY

J.E.H. is the paternal grandmother of C.M.F. A.T.F. is C.M.F.'s mother. On and off since shortly after her birth C.M.F. has resided in her grandmother's home. At times A.T.F. has resided there also. On January 4, 1993, A.T.F. executed a release of custody. On the same date attorney Mitchell L. Taylor, as custodian of C.M.F., filed a petition for the termination of A.T.F.'s parental rights.

On April 28, 1993, A.T.F. filed a "Request for Revocation of Release of Custody." In this request the mother asserted her release of custody had been obtained by fraud, coercion, and misrepresentations by J.E.H. and her family. The request further asserted it would be in the best interests of C.M.F. for the release of custody to be revoked.

A combined hearing was held on the request to revoke the release of custody and the petition to terminate parental rights. The juvenile court found it was in the child's long-term best interests to live with her mother and allowed the release of custody to be revoked. The petition to terminate was dismissed.

### III. APPLICABLE LAW

At the time A.T.F. filed her request to revoke her release of custody and the hearing thereon, the relevant portions of the governing statute provided--

[T]he juvenile court shall order the release or releases revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes **but is not limited to** a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. **In determining whether good cause exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child** including avoidance of a disruption of an existing relationship between a parent and child. The juvenile court shall also give due consideration to the interests of the parents of the child and of any person standing in the place of the parents.

Iowa Code § 600A.4(4) (1993) (emphasis added).

A.T.F. bore the burden of proving good cause exists for revocation of her release of custody. See In re C.K., 315 N.W.2d 37, 43 (Iowa 1982) (natural parent has burden of proving fraud or other good cause by clear and convincing evidence). The juvenile court ruling clearly recognized and applied this burden of proof to the mother. The court found A.T.F. had not proven by clear and convincing evidence her release of custody was obtained by fraud, coercion or misrepresentation of law or fact. However, the court did find the child's best interests warranted revocation of the release of custody. We find no illegality in this conclusion and hold it is consistent with the the statutory directive mandating a child's best

interests be the "paramount consideration" in determining if good cause exists for revocation. See Iowa Code § 600A.4(4).

The list of factors set forth in section 600A.4(4) are not an exclusive list of examples of conduct which constitute good cause. If supported by clear and convincing evidence, the best interests of a child may constitute good cause for ordering the revocation of a release of custody. It is clear from the juvenile court's ruling it concluded this was such a case.

J.E.H. argues the juvenile court improperly placed the burden upon the custodian to establish the best interests of the child. We note this was a combined hearing on both the revocation request and the petition to terminate parental rights. As the party petitioning for a termination of the mother's parental rights, the custodian would ultimately have borne the burden to establish termination was in the child's best interests even if he had otherwise established one of the grounds for termination listed in section 600A.8. See In re B.L.A., 357 N.W.2d 20, 23 (Iowa 1984) (court must make additional determination of child's best interests even where statutory grounds for termination are established).

While the placement of this burden upon the custodian may technically have been in error with respect to the initial issue of the release of custody, we do not believe this is fatal to the district court's ruling. The closing

paragraph of the juvenile court's ruling reflects that regardless of who had the burden, the court found the child's long term best interests warranted a revocation of the release of custody.

J.E.H. also argues there is not clear and convincing evidence to establish good cause to revoke the release of custody. Certiorari is an action at law which tests the legality of an action taken by a lower court. Zimmermann 480 N.W.2d at 74. Illegality in the lower court's ruling exists only if the findings of the lower court do not have substantial evidentiary support. See Whitlock, 497 N.W.2d at 893.

The hearing on this matter lasted seven days and the juvenile court considered 62 exhibits and the testimony of 17 witnesses. The juvenile court noted the mother and grandmother had "about an equal number of defects in their lifestyles", but it believed the mother, rather than the grandmother, was more likely to change her lifestyle to better cope with parental duties and accommodate C.M.F.'s needs.

A wrongful death action had been instituted after the death of the child's father and she was the sole beneficiary of his sizable estate. The juvenile court was particularly concerned about J.E.H.'s considerable financial problems, and it believed A.T.F. would be more cooperative with the conservator in caring for the child's assets.

There was substantial evidence to support the juvenile court's decision to allow a revocation of the release of custody and we find no illegality in our certiorari review of this action.

**WRIT ANNULLED.**