

IN THE IOWA DISTRICT COURT, IN AND FOR BLACK HAWK COUNTY

IN THE INTEREST OF

COLLIN, ALEC, ISAAC,  
AND HUNTER NISSEN,

Children.

Case No. JVJV12294-12297

ORDER ON FATHER'S MOTION FOR  
EVIDENTIARY HEARING ON RELIABILITY  
OF SWEAT PATCH TESTING

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BLACK HAWK COUNTY IOWA

On the 21<sup>st</sup> day of August, 2007, the above-entitled matters came before the Court for a Hearing on the father's Motion for evidentiary hearing on the reliability of sweat patch testing. Present for the hearing was Assistant Black Hawk County Attorney, Kathleen Hahn. Michelle Pexa, a/k/a Michelle Cooper, appeared on behalf of the Iowa Department of Human Services. The children in interest did not personally appear; however, the children's interests were represented by their attorney and guardian ad litem, Linnea Nicol. The children's mother, Lindsay Koffler, did not appear; however, her interests were represented by her attorney, Tammy Banning. The mother's presence was waived. The children's father, David Nissen, was personally present and represented by his attorney, Linda Hall. Numerous other parties appeared. Offered and admitted into evidence were Father's Exhibit 1, 17 page *Appendix A to Comments of National Federation of Federal Employees*; Father's Exhibit 2, eight page *Testing Testing* article in *Legal Affairs* magazine authored by Lara A. Bazelon; Father's Exhibit 3, 16 page *Comparison of Daily Urine, Sweat, and Skin Swabs Among Cocaine Users*; Father's Exhibit 4, five page *Assessment of the Effectiveness of the PharmChek Sweat Patch Skin Cleansing Procedures* in the *Bulletin of the International Association of Forensic Toxicologists*, year 2002; Father's Exhibit 5, 12 page article, *Drug Deposition in Adipose Tissue and Skin: evidence for an alternative source of positive sweat patch tests*; Petitioner's Exhibit 6, 24 page article from the Naval Research Laboratory, *Susceptibility of PharmChek Drugs of Abuse Patch to Environment Contamination* dated November 3, 1999; Father's Exhibit 7, one page drug screen results for David Nissen with a collection date of July 13, 2007; Father's Exhibit 8, one page drug screen results for David Nissen dated July 16, 2007; Father's Exhibit 9, one page drug screen results for David Nissen dated July 18, 2007; Father's Exhibit 10, one page document captioned *David Nissen Drug Screen Results*; Father's Exhibit 11, 12 page document captioned *Drug Testing Guidelines Developed for Department of Human Services*; Father's Exhibit 12, two page copy of email from Patty Mowatt dated October 27, 2005; Father's Exhibit 13, 11 page *Training Manual for PharmChek Drugs of Abuse Patch*; and Father's Exhibit 15, three pages of Chain of Custody Reports. Testimony was offered at time of hearing by Dr. Leo Kadejhian, Patty Mowatt, and David Nissen. At the close of the hearing, the Court took the matter under advisement and gave counsel an opportunity to file written closing arguments. Both the State and the father have filed closing arguments in the matter. The proceeding was reported.

After listening to the testimony of the State's expert, Biochemist, Dr. Leo Kadejhian, and having reviewed all of the exhibits which have been offered herein, the Court finds sufficient reasoning and/or methodology exists from which the Court can rely upon the validity of sweat patch testing. Sufficient scientific knowledge and technique exists to support sweat patch testing. Further, sweat patch testing has been subject to peer review and publication as clearly set forth by the exhibits submitted herein. There is known or potential rate of error, and sweat patch testing is generally accepted within the scientific community. *Leaf v. Goodyear* 590 N.W. 2d 525, 532 (Iowa 1999). However, this Court does not believe that any drug testing is 100

percent reliable, and numerous factors must be weighed when considering reliability of all testing. The father's assertion that urinalysis testing is the gold standard and most reliable method of drug testing is not held by this Court. This Court has, on a weekly basis, individuals diluting or otherwise masking urine testing. Likewise, this Court does not believe that hair stat or sweat patch testing is 100 percent accurate. Testimony and documents offered herein reflect that sweat patch testing can be subject to contamination by environmental factors, drug metabolites contained in fat cells, and improper application or manipulation of the patch itself.


Given that no drug test is 100 percent reliable, this Court continues to believe that a panoply of testing is the most reliable evidence from which the Court can make a determination that a person is using illegal substances. This testing should include sweat patch testing, random urinalysis testing, hair stat testing, visual monitoring, and other environmental factors. If a person whose drug of choice is cocaine has one positive drug test for opiates, this Court is less likely to give the opiate test any considerable weight. However, with a person known to abuse cocaine who subsequently tests positive for cocaine through drug testing, this Court would give more weight to said testing. Given David Nissen's predisposition for the use of cocaine, the fact that he continues to test positive for cocaine must be given consideration. The father's argument of environmental exposure has minimal merit based upon the mother who resided with him throughout a majority of the testing time testing negative for cocaine through sweat patch testing. Because of the highly likelihood of abuse or neglect resulting from individuals using illegal substances, some form of random drug testing must occur. This Court believes sufficient reasoning and/or methodology exists to support the validity of sweat patch testing. Sweat patch testing and along with a panoply of other testing and subjective measures are necessary to assure children can be returned to substance abusing parents. Further, the Iowa Department of Human Services has used the information received from said testing appropriately in determining visitation, reunification efforts, and services.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the father's request that sweat patch testing previously implemented be withheld from consideration in determining visitation and other reunification services is hereby denied.

**IT IS FURTHER ORDERED AND ADJUDGED** that upon Motion of the children's attorney and guardian ad litem, this matter shall come before the Court for a Modification of Disposition Hearing on the 16th day of January, 2008, at 10:30 Am in the designated Juvenile Courtroom of the Black Hawk County Courthouse, Waterloo, Iowa.

**IT IS FURTHER ORDERED AND ADJUDGED** that pending further hearing, all current custodial and supervisory orders shall remain in effect.

Dated this 30<sup>th</sup> day of November, 2007.

  
**DANIEL L. BLOCK**  
Associate Juvenile Judge

Copies to: Co. Attorney, DHS, Linda Hall, Linnea Nicol, Mother, Father, Tammy Banning, Case Coordinator