

IN THE COURT OF APPEALS OF IOWA

No. 23-1865
Filed March 27, 2024

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

J.C., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County,
Gary P. Strausser, Judge.

A mother appeals from a dispositional order filed in a child-in-need-of-
assistance proceeding. **AFFIRMED.**

Christopher J. Foster of Foster Law Office, Iowa City, for appellant mother.

Brenna Bird, Attorney General, and Mackenzie Moran, Assistant Attorney
General, for appellee State.

Mark J. Neary, Iowa City, attorney and guardian ad litem for minor child.

Considered by Greer, P.J., and Schumacher and Ahlers, JJ.

AHLERS, Judge.

N.S. was born in 2010. In 2022, the Iowa Department of Health and Human Services stepped in to try to protect N.S. from mental harm caused by her mother. It was the fifth time since 2013—and fourth since 2018—that the department had to become involved with the family. The ensuing investigation and involvement by the department led to the juvenile court adjudicating the child as a child in need of assistance (CINA) and entering a dispositional order placing the child in her father’s custody.

The mother appeals the dispositional order. While she does not directly appeal the adjudication of the child as a CINA, she does challenge the juvenile court’s denial of her motion to reopen the record of the adjudicatory hearing to allow the child to testify.¹ She also challenges the court’s dispositional decision to place custody of the child with the child’s father and denial of her motion to change her service provider.

We generally review CINA proceedings de novo. *In re J.S.*, 846 N.W.2d 36, 40 (Iowa 2014). While we give weight to the juvenile court’s factual findings, those findings are not binding on us. *Id.* “Our primary concern is the child[]’s best interests.” *Id.* However when reviewing the denial of a motion to reopen the record, we review for an abuse of discretion. *In re L.T.*, 924 N.W.2d 521, 526 (Iowa 2019). “In order to show an abuse of discretion, a party must show the juvenile court’s action was unreasonable under the attendant circumstances.” *Id.*

¹ An adjudicatory order does not become final, and appealable, until entry of the dispositional order. See *In re H.W.*, 961 N.W.2d 138, 140 n.1 (Iowa Ct. App. 2021) (recognizing a parent properly appealed the adjudication of her children as CINA following entry of the subsequent dispositional order).

I. Reopening the Adjudicatory Record

As the mother's challenge to the juvenile court's denial of her motion to reopen the adjudicatory record is relevant to the underlying adjudication, we begin our analysis with this challenge. The mother contends the child repeatedly expressed a desire to testify to several adults involved in this case. Moreover, the mother contends the child could provide the court with better insight into how the mother's conduct impacts her as opposed to the court relying on the child's therapist for that information.

When asked how testifying would impact the child, her therapist opined, "I think it would be extremely detrimental to her. She is already in a tug of war, and with—between how she feels and what she thinks her mom wants her to do, and I don't think—I don't think it is appropriate." She went on to explain that she believes the mother is attempting to influence what information the child shares with case workers and providers. The therapist explained that the mother continues to manipulate and emotionally abuse the child, even during their supervised visits. The juvenile court found the therapist to be credible. We defer to the juvenile court's credibility determination and, given the therapist's concerns, conclude the juvenile court did not abuse its discretion when it denied the mother's motion to reopen the adjudicatory record to permit the child to testify.

II. Custody of the Child

Next, the mother challenges the juvenile court's decision to place custody of the child with the father under the department's supervision. In doing so, she implies she should have custody of the child rather than the father and cites her own concerns about the father's ability to provide for the child's needs.

Following the dispositional hearing, the juvenile court must “make the least restrictive disposition appropriate considering all the circumstances,” choosing from the options listed in Iowa Code sections 232.100 through 232.102 (2022). Iowa Code § 232.99(4). “Whenever possible the court should permit the child to remain at home with the child’s parent, guardian, or custodian.” *Id.* § 232.102(4)(a). However, custody should be changed when the court finds by clear and convincing evidence that “[t]he child cannot be protected from some harm which would justify the adjudication of the child as a [CINA] and an adequate placement is available.” *Id.* § 232.102(4)(a)(2).

Our review of the record supports the juvenile court’s decision to place custody of the child with the father rather than with the mother. As noted, the department became involved with this family for the fourth time in four years following reports the mother caused mental injury to the child. Investigation revealed the mother’s efforts to keep the child from reporting what happens in the mother’s home, at one point telling the child she would shoot the horses owned by one of the child’s medical providers because the provider advocated on the child’s behalf. The mother has also attempted to persuade the child to not take her prescription mental-health medications by claiming the medication actually contained methamphetamine. As previously mentioned, the child’s therapist believes the mother continues to emotionally abuse and manipulate the child. This leads us to conclude that it is not safe for the mother to have custody of the child.

Conversely, the child freely discusses what happens at her father’s house with her therapist, and nothing she has said raises concerns for the therapist. And the father has complied with all requests and directions from the department.

Placing the child in the father's custody protects the child from psychological harm at the hands of the mother and is in keeping with the rebuttable presumption that it is in the child's best interests to be placed in a parent's custody. See *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). We agree with the juvenile court that placing custody of the child with the father serves the child's best interests.

III. Motion to Change the Service Provider

Finally, the mother challenges the juvenile court's denial of her motion to change the service provider. She frames her challenge as a reasonable-efforts challenge. "Reasonable efforts' means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home." Iowa Code § 232.102A(1)(a). "The nature of the reasonable-efforts mandate is determined by the circumstances of each case." *In re M.G.*, No. 18-0650, 2018 WL 3912192, at *2 (Iowa Ct. App. Aug. 15, 2018). "But the reasonable-efforts mandate does not create a menu from which discerning parents may order specific services." *In re M.P.*, No. 19-0995, 2019 WL 5063337, at *4 (Iowa Ct. App. Oct. 9, 2019).

The mother claims the "current service provider does not support her efforts toward reunification . . . hindering the provision of reasonable efforts toward reunification" and "that she feels that she is not being provided services necessary for reunification." But the mother cannot point to any service she believes the provider should be providing and is not. Instead, the mother testified that she reviews the service provider's notes and commented that those notes "seem to be very accurate as to what is happening and being said." She also concedes the

provider reassures the child that visits don't need to end early and that she can take full advantage of the time she has with the mother. This leads us to conclude there is not a deficiency in the service provider's efforts. Rather, the mother would simply prefer a different service provider. But the mother is not entitled to set the particular terms of services. Instead, it is her obligation to avail herself of all services provided and request additional services as necessary. The juvenile court correctly denied the motion for a new service provider.

AFFIRMED.