

IN THE COURT OF APPEALS OF IOWA

No. 0-194 / 10-0199
Filed April 21, 2010

**IN THE INTEREST OF A.H.,
Minor Child,**

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

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals the juvenile court's modification of a dispositional order.

REVERSED AND REMANDED.

Jean C. Lawrence, Marion, for appellant mother.

Sara Smith, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant County
Attorney, for appellee State.

Robert Davison, Cedar Rapids, and Deborah M. Skelton, Walford, for
minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

A mother appeals the juvenile court's modification of a dispositional order. Upon our de novo review, we reverse and remand for further proceedings.

I. Background Facts and Proceedings.

S.H. is the mother and L.H. is the father of A.H., born in September 1997.¹ A.H. has learning disabilities and can be argumentative. A.H. came to the attention of the Iowa Department of Human Services (Department) in April 2004, after it was reported that the mother failed to provide adequate supervision of A.H. and A.H.'s two older siblings.² Prior to April 2004, there had been several founded child abuse reports regarding the parents.³

On June 29, 2004, the State filed a petition alleging A.H. and A.H.'s siblings to be children in need of assistance (CINA). An adjudicatory hearing was held in November 2004. There, the parents stipulated that the children were CINA as alleged in the State's petition. Following the hearing, the juvenile court entered an order adjudicating the children CINA.

In December 2004, the juvenile court entered its dispositional order. The court ordered the mother to complete a mental health evaluation and to provide urine samples for urinalysis. The court continued A.H.'s placement in the mother's care.

Services were provided to the family for several years. In July and August 2007, the mother admitted she had used illegal substances. The children were

¹ The father has not appealed from the modification of the dispositional order.

² A.H.'s siblings are not at issue in this appeal.

³ The parents are no longer together.

removed from her care and placed with relatives. Services were continued for the family. A.H. was later placed in family foster care.

On July 9, 2008, the juvenile court entered its order returning A.H. to the mother for a trial home placement, which began in September 2008. On May 20, 2009, the court entered its permanency review order returning A.H. to the mother's custody, with services for the family continuing. At that time, the mother and the children had moved from Cedar Rapids to Waterloo. The mother was able to transfer her employment to Waterloo, and she moved into a two-bedroom upstairs duplex.

After moving to Waterloo, new service providers were assigned to the case. At the end of August 2009, a new Department social worker was assigned. Approximately two weeks later, the Department requested that A.H. be temporarily removed from the mother's care. The Department asserted that the mother had missed providing one urine sample, had individuals in her home who were not approved, had individuals hanging around outside her duplex who the providers feared, had driven with A.H. when she did not have a license, had not set up her mental health appointments in Waterloo, did not know where A.H. was when the provider dropped in, did not provide the structure A.H. needed, did not make sure A.H. was getting her prescriptions at school, and had allowed her boyfriend to abuse illegal substances in A.H.'s presence. A.H. was then temporarily removed from the mother's home and placed in foster care. Thereafter, the State filed an application to modify the juvenile court's prior dispositional orders, seeking that A.H. be placed in foster care. The mother received supervised visitation with A.H.

In approximately October 2009, the mother was sexually assaulted in her home. She called the police and reported the crime, but was unable to identify her attacker to the police. She was unsure how the attacker entered her home. Thereafter, because the mother felt unsafe, her adult son, along with his wife and child, moved in with her into her two-bedroom duplex.

Hearing on the matter was held on October 23, 2009, and December 15, 2009. The Department's social worker assigned to the case recommended that A.H. be placed in family foster care. On October 23, the worker testified her recommendation was based on a few concerns she had, explaining:

[The mother] was recently sexually assaulted in her home, which is a concern that somebody is attacking her in her home. There's been concerns [that the mother has] not kept up her medicine. She is addressing that now. But that's something that should be kept up on a regular basis. There's just concerns the visits are short. . . . I think they're about an hour or two long. I haven't heard any major concerns, but it doesn't sound like there's a lot going on at the visits. There's very minimal interaction.

The worker testified that a service provider and the court appointed special advocate (CASA) had reported to her that there were a lot of concerns of a lot of people being in the home and not feeling safe going into the home. She testified that it was her understanding that the mother was attacked by a friend of her boyfriend, which was why the service providers were concerned about questionable people hanging around the home. She reported the mother's adult son had recently been arrested on drug charges, which was a concern for A.H. being returned to the mother's care, as he was living with the mother.

The worker acknowledged the mother had not, in fact, missed providing a urine sample as stated in the emergency removal application. She also

acknowledged that a hair stat test had been performed on A.H., which came back negative, indicating A.H. had not been exposed to individuals using substances around her as stated in the emergency removal application. The worker testified there had been two persons in the mother's home who were "unapproved," but acknowledged that the persons actually turned out to be or were later approved to be visitors in the mother's home. The worker testified the mother had explained that the people hanging around outside her home were visitors of her neighbors' in the duplex and not the mother's visitors, and that the neighbors had been recently evicted. The worker testified that the mother had informed her that she had tried to continue her mental health treatment in Black Hawk County, but the mother was running into some difficulties with her insurance and payment. The worker acknowledged that the mother had told her that the service provider was not helping her in obtaining her mental health treatment. The worker testified that as of October 23, the mother had been involved in family counseling for a couple of weeks. The worker testified the mother told her she kept her visits with A.H. to about an hour or two, because A.H. was uninterested and lacked focus; A.H. did her own thing and did not maintain one-on-one contact with the mother during the visits. The worker testified that she had been told the mother had been told A.H.'s prescriptions needed to be refilled, but acknowledged that the mother told her she had not received notification that the prescriptions had run out and the mother then took care of the medications. The worker testified the mother communicates with her regularly. The worker testified that she would recommend a trial placement if the mother remedied her concerns. The worker testified she had no reason to

believe that the mother had been drinking or using illegal substances, the mother had done everything the worker had asked of her in the last month or so, and that the mother had shown a great deal of improvement.

On December 15, the social worker was recalled as a witness. She testified that she still recommended A.H. be placed in foster care. She testified she had concerns for returning A.H. to the mother because the mother's older son was still living there. She testified the mother's duplex only had two rooms and A.H. would not have a room, and that she still had concerns about the son's drug use. She testified the mother had made progress since October, and the worker had not heard any concerns regarding the mother's parenting skills. She testified that the current service provider had not reported any safety concerns for A.H.'s return to the mother, but was concerned about childcare for A.H. She testified that the mother had set up her mental health appointment and was back on her medication. She testified that the mother had been consistent in her visits and that she had not heard any concerns in regards to the visitation. She testified that it was her understanding that there was no drug usage in the home. She testified that both A.H.'s and the mother's mental health needs were being addressed at that time.

The mother testified that A.H. had a curfew of eight or nine p.m., depending on the season, and that she would let A.H., then approximately twelve years old, go with her friends to the nearby park to play, unsupervised. She testified that the service provider had incorrectly stated that she did not know where A.H. was during a drop-in; A.H. was at the park, and A.H. was not with older males—she was with younger kids. She testified the park was safe. She

testified that her boyfriend had not been physically abusive to her, and she did not know her attacker. She testified she had been employed for over two years, and had lived at her duplex for approximately six months. She testified she did not drive with A.H. in the car after she signed the safety contract stating she would not do that. She testified she had contacted A.H.'s teacher several times. She testified her son living with her was attending a drug treatment program once a week. She testified she believed A.H. could be safely returned to her care.

One of the mother's prior service providers testified on the mother's behalf. The provider testified that she began working with the mother in 2004 and she stopped officially working with the mother in May 2009. She testified the mother was cooperative, and that before the mother moved to Waterloo, they had contact at least five times a week. She testified she still had weekly contact with the mother after her move. She testified the mother and A.H. had a very strong bond that had been maintained even when A.H. had been removed from her care. She testified that she had gotten to know the mother, and at first, she might have thought that the mother was not concerned about her children. She testified that getting to know the mother, she learned the mother is very shy, maybe struggles with some self-esteem issues, but definitely loves her children. She testified she helped the mother set up her mental health treatment in Waterloo after she ran into coverage issues. She testified that the mother needed to continue to work on her consistency with parenting, but she believed that the mother could provide a safe home for A.H. at that time.

A.H. testified at the hearing that she wanted to live with the mother.

The CASA filed a report with the juvenile court recommending A.H. not be placed with the mother. In the report, the CASA stated:

[A.H. does not] appear to do well when living with [the mother]. . . .

[The mother does not] appear to be able to provide her children with the kind of structure that her children require and need. . . .

. . . .
[A.H.] has been found hanging out with older boys [and] young men when in the care of her mother. Her mother is not always aware of [A.H.'s] whereabouts

[A.H.'s] behavior in the past has improved while in the care of a foster family. As has her personal hygiene. [A.H.] appears to require a more structured lifestyle and does better when she knows what is expected of her. She does not always get this when living with her mother.

I have some concerns about [the mother] having boyfriends in the home around her children. [The mother] has a history of becoming involved with abusive men. [The mother] has also had a history of putting her boyfriends before her children. As this point in time, [the mother] should be more concerned about doing what it takes for her to get her children back into her care. This means keeping up with her therapy. Taking her medication. Being more honest with those of us [who] are working with her to help her get her children back into her care. Providing the proper parenting skills with the proper structure needed to keep her children's behavior under control.

I have a concern about [the mother] driving with a suspended driver's license. I have been told that [the mother] now has [a licensed driver] to transport [the mother] and the children. However, [the mother] has been seen driving the car by herself. . . .

On January 19, 2010, the juvenile court entered its order modifying its prior dispositional order, placing A.H. in family foster care. The court found there had been a change of circumstances that required a modification of the prior disposition order in that A.H. could no longer live in the parental home. The court also found reasonable efforts had been made to alleviate the need for out-of-home placement without success. Additionally, the court found that continuation of A.H. in the parental home would be contrary to A.H.'s welfare because

[the mother] needs to consistently meet her mental health needs and take medications as prescribed. [The mother] has a long history of associating with inappropriate persons which has led to physical violence and exposing [A.H.] to that violence. [The mother] also needs to consistently address [A.H.'s] mental health needs. [The mother] needs to maintain sobriety, a stable residence and stable appointments. Unfortunately, [the mother] does not have a history of being completely honest with the [Department]. [The mother] needs to take responsibility for her actions and make better choices for herself and her children. [The mother] needs to be honest with those persons who are working with her to get her children back. [The mother] needs to establish a structured environment for herself and her children. [The mother] needs to work to get her driver's license back and avoid driving with or without her children on a suspended driver's license. [The mother] needs to be involved in her children's school and educational needs.

The mother appeals.

II. Scope and Standards of Review.

Our review of CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). “We review ‘both the facts and the law, and we adjudicate rights anew.’” *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (citations omitted). “[W]e give weight to the juvenile court’s fact-findings, especially when considering the credibility of witnesses, but those findings do not bind us.” *In re J.A.L.*, 694 N.W.2d 748, 753 (Iowa 2005). “As in all juvenile proceedings, our fundamental concern is the best interests of the child.” *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

III. Discussion.

In enacting chapter 232 the legislature enunciated the purposes of the chapter in providing it

shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child’s own

home, the care, guidance, and control that *will best serve the child's welfare* and the best interest of the State.

Iowa Code § 232.1 (2009) (emphasis added). Following a dispositional hearing, the juvenile court must make “the least restrictive disposition appropriate considering all the circumstances of the case.” *Id.* § 232.99(4). Thereafter, a dispositional order may be modified prior to its expiration. *See id.* § 232.103. The party seeking a modification of the custody provisions of a prior dispositional order must show the circumstances have so materially and substantially changed that the best interests of the child requires such a change in custody. *See In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005).

Upon our de novo review, we find the State failed to show the circumstances had so materially and substantially changed that the best interests of the child required such a change in custody. At the time of the hearing, the mother's and A.H.'s mental health needs were being met. The mother had been sober for at least two years, and there was no evidence she had been using illegal substances or had failed to provide a sample for urinalysis. The mother was cooperative with services. She had stable housing and employment. Her neighbors, who had persons loitering about, had been evicted. The mother was not associating with inappropriate persons. She was involved in A.H.'s schooling and A.H.'s life. Although service providers and the social worker found that the mother needed to improve her consistency, we do not find anything that establishes a material and substantial change so that the best interests of the A.H. would require such a change in custody. On the last day of the hearing, the only concern the social worker had was the older son living in the home, and she

testified she did not believe there was any drug use in the home. The current service provider's only concern was childcare, which the mother had previously addressed when the issue arose. The former service provider, who had been involved with the family for five years, testified she had no concerns about A.H. being returned to the mother's care, even with the older son living there. The mother and A.H. are bonded, and A.H., who is twelve, wishes to be returned to her mother's care. Given the details of this lengthy CINA case, we do not find the circumstances had so materially and substantially changed that A.H.'s best interests required such a change in custody. We therefore reverse the juvenile court's modification of dispositional order and remand for further proceedings.

AFFIRMED.