

IN THE COURT OF APPEALS OF IOWA

No. 0-341 / 10-0489
Filed May 26, 2010

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

**J.L.H., Father,
Appellant.**

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

A father appeals from the juvenile court order removing his child from his custody. **AFFIRMED.**

James Underwood of Underwood Law Office, Centerville, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Richard F. Scott, County Attorney, for appellee.

Kevin Maughan, Albia, for mother.

Jonathan Willier, Centerville, guardian ad litem and attorney for minor child.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

SACKETT, C.J.

A father appeals from the juvenile court order that modified the prior dispositional order and removed the child from his custody. He contends the State did not make reasonable efforts to prevent the child's removal, the State did not prove grounds for modifying disposition, and removal is not in the child's best interests. We affirm.

BACKGROUND. The child, born in 2004, and her half brother who were in their mother's care came to the attention of the Iowa Department of Human Services most recently¹ around December of 2008, based on, among other things, the mother's substance abuse.² In January of 2009, the mother left the child with the child's father. Following an adjudicatory hearing in March, the court found the child to be in need of assistance. The court noted concerns about the father but placed the child in his temporary custody and care, subject to supervision by the department. The court ordered the father to participate in substance abuse treatment, to follow a safety plan, and participate in parent skill development. The safety plan included the father's agreement he abstain from alcohol and illegal substances and that he not leave the child with persons who did not also so abstain. The court advised the father it would remove the child from his care if he did not follow the safety plan. Following subsequent hearings in July and December the child remained in her father's care.

¹ The department had previously been involved with the mother in child in 2005-2006.

² The initial investigation resulted in a founded child abuse report for denial of critical care.

In January of 2010, the department sought to modify the child's placement. It alleged the father violated the safety plan, abused alcohol while denying its use, did not participate in substance abuse treatment, pled guilty to public intoxication, exposed the child to physical violence and to persons who abused alcohol and illegal substances, and failed to meet the child's emotional needs. Following a March hearing the court modified placement of the child and transferred her to the department's custody for foster care placement. The child was placed in the same foster home as her half-sibling.

SCOPE AND STANDARDS OF REVIEW. We review juvenile court proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

Iowa Code section 232.103(1) (2009) provides for modification of a dispositional order prior to its expiration. A party seeking modification of a dispositional order must show "a substantial change in material circumstances, and that under the new conditions, a change is in the best interests of the child" or children. *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005). If clear and convincing evidence shows a substantial change in circumstances since a dispositional order, the child's best interests may require a change in placement. *See id.*; *see also In re C.D.*, 509 N.W.2d 509, 511 (Iowa Ct. App. 1993).

MERITS. The father contends the department did not make reasonable efforts in that it did not provide him with the services necessary to keep the child

in his home. The juvenile court found the department had made reasonable efforts to prevent the child's removal. We find nothing in the transcript of the hearing or in the modification order that gives any indication the father requested different or additional services that were not provided. The father's petition on appeal does not indicate when, or if, any additional or different services were requested. This issue is not preserved for our review.³ See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (holding "a parent has an obligation to demand other, different, or additional services" prior to the hearing).

The father claims the State "failed to show that the child should be removed from the home and is in danger" if she continue to be in her father's care. Concerning the requirement of a change in circumstances, the court concluded:

There has been a substantial change in circumstances since the court's prior dispositional order. This is not the first time there have been questions about [the father's] supervision of [the child]. Testimony has been presented at other hearings regarding [the father's] drinking, and his ability to follow safety plans. It is clear from the testimony presented that [the father] has violated the safety plan by exposing [the child] to drinking in the home, and by allowing unauthorized or unsafe persons to supervise [the child]. [The father] has also not been honest with the case manager and the in-home provider by misleading them as to whether he has been convicted of public intoxication and as to the identity of someone in his home. This calls into question whether the court can trust [the father] to safeguard [the child's] best interests.

Clear and convincing evidence supports this conclusion. We affirm on this issue.

³ We also could deem this issue waived for failure to cite authority in support of the issue. See Iowa R. App. P.6.201(1)(d) & 6.1401-Form 5. The father lists only "Iowa Code section 232" as authority for each of his claims.

The father contends modifying the disposition to remove the child is not in the child's best interests. We disagree. The father has a serious, unresolved substance abuse problem. He leaves the child with inappropriate child care providers.

AFFIRMED.