

IN THE COURT OF APPEALS OF IOWA

No. 0-572 / 10-1098
Filed August 25, 2010

**IN THE INTEREST OF D.B.,
Minor Child,**

**F.R.B., Father,
Appellant.**

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

A father appeals the juvenile court's modified dispositional order relating to his child. **AFFIRMED.**

Jonathan Willier, Centerville, for appellant father.

Robert Bozwell, Centerville, for mother.

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

Kevin Maughan, Albia, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

A father appeals a juvenile court's modified dispositional order in a child in need of assistance (CINA) proceeding. Under this modified order, custody of the child was transferred from the father to the paternal grandparents. We agree with the juvenile court that the father's long history of methamphetamine abuse, coupled with a recent report of drug use and the father's unwarranted refusal to submit to drug testing, justify a modified order. Thus, we affirm.

I. Background Facts and Proceedings.

The father has an extensive history of substance abuse, including use of methamphetamine, marijuana, cocaine, and alcohol. In 1997, he was convicted and served time in prison for manufacturing methamphetamine. He has undergone substance abuse treatment at least three times; the last time was in 2006.

D.B. was born in March 2007. In June 2009, the Iowa Department of Human Services (DHS) received reports that the father and D.B.'s mother were using methamphetamine and marijuana in D.B.'s presence along with allegations of domestic violence. During the subsequent child abuse assessment, both the father and mother tested positive for methamphetamine and marijuana. D.B. was removed from the home and placed with his paternal grandparents.

Following an adjudicatory hearing on October 22, 2009, the father and mother stipulated to D.B. being a CINA under Iowa Code section 232.2(6)(c)(2) (2009). D.B. was initially placed with the mother on the condition she complete

substance abuse treatment. However, the mother left treatment early, and custody was returned to the paternal grandparents.

After D.B.'s removal, the father participated in several services including two substance abuse evaluations (which did not recommend any treatment), a batterer's education program, and parenting skills services. The father also provided a clean hair stat test in December 2009 and regularly attended visitation. Due to the father's progress, D.B. was formally returned to the father's custody following a review hearing on March 4, 2010.

On April 5, 2010, DHS received a report alleging the father was using methamphetamine around D.B. DHS contacted the father that day. While denying methamphetamine use, the father did agree to have D.B. temporarily placed with the paternal grandparents. He also agreed to appear for drug testing the next morning. However, the father did not appear on April 6. When DHS tried to reach the father at his residence on April 6 and 7, no one answered. The father finally appeared at the DHS office on April 8. At that time, DHS asked the father to provide a hair test instead of a urinalysis, out of concern that he would have been able to metabolize whatever was in his system. The father refused, and later refused additional hair tests while also failing to return DHS's calls.

On May 6, 2010, the State filed a motion for change of disposition requesting the legal custody of D.B. be placed with the paternal grandparents. The motion came to a hearing on June 10, 2010. At the hearing, the father testified he had not used any illegal substances since his relapse in June 2009.

Regarding his refusal to submit to the recent requests for drug testing, the father stated:

Up on the hair test, I have gave—the last hair test I gave, the fella that took the hair test, he wasn't real professional. He cut the back of my head. The hair test before, that wasn't professional. The lady that took it, [tester's name], wasn't using rubber gloves. Therefore, as far as the hair test goes, I just disagree with it.

When cross-examined about drug use, the father testified as follows:

Q. When was the last time you used methamphetamine?
A. I couldn't tell you?

Q. Last week? A. I don't keep track of that. I live today, not what happened yesterday or prior.

Q. So you don't remember if you used methamphetamine a week ago? A. Yes, I did.

Q. Did you use methamphetamine? A. No.

Q. When is the last time you used it? A. I couldn't tell you.

On June 24, 2010, the juvenile court filed an order modifying the prior dispositional order and placing D.B. with the paternal grandparents. The father now appeals.

II. Standard of Review.

Our review of CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). Although we give weight to the juvenile court's factual findings, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our fundamental concern is the best interests of the child. *Id.*

III. Analysis.

A court may modify a dispositional order at any time prior to its expiration. Iowa Code § 232.103(1). However, before a dispositional order is modified, "the party seeking modification must first prove a substantial change in material circumstances, and that under the new conditions, a change is in the best

interests of the child.” *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005). The father challenges whether the State established by clear and convincing evidence a substantial and material change in circumstances. Upon our review of the record, we find the State carried its burden in this case.

The father has a longstanding substance abuse problem that includes several relapses despite having completed treatment programs. This CINA proceeding was initiated after the father relapsed while caring for D.B. Random drug testing has been required ever since the CINA adjudication occurred in October 2009. We agree with the juvenile court that the sum total of the evidence, including the father’s refusal to submit to drug testing, his unconvincing explanation for that refusal, and his cavalier responses when questioned about recent methamphetamine use, establish a substantial and material change in circumstances, as well as a clear and imminent threat to the child’s safety. *State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993).

In addition, although there has been no direct evidence showing harm to D.B., we do not need to wait for such harm to occur. See *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990) (stating the provisions of Iowa Code chapter 232 are preventative as well as remedial). The statutory provisions “are designed to prevent probable harm to the child and do not require delay until after harm has occurred.” *Id.*; see also Iowa Code § 232.2(6)(c)(2) (protecting a child who has “suffered or is imminently likely to suffer harmful effects” as a result of a parent’s inability to exercise a reasonable degree of care).

Accordingly, we affirm the order of the juvenile court modifying its prior dispositional order and placing D.B. in the custody of his paternal grandparents.

AFFIRMED.