

**IN THE COURT OF APPEALS OF IOWA**

No. 0-724 / 10-1146  
Filed October 6, 2010

**IN THE INTEREST OF T.C., T.C., A.C., and A.C.,  
Minor Children,**

**D.C.-S., Mother,**  
Appellant,

**W.R.C., Father,**  
Appellant.

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

A father appeals from an order modifying the disposition of four of his  
children who were previously adjudicated children in need of assistance.

**AFFIRMED.**

Joan M. Black, Iowa City, for appellant mother.

Cory R. Speth, Mt. Vernon, for appellant father.

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

Barbara Connolly, Cedar Rapids, and Cynthia Finley, Cedar Rapids, for  
minor children.

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

**MANSFIELD, J.**

This appeal from a modification order involves four children of Ray, who were born in 1993, 1996, 1998, and 2001 respectively.<sup>1</sup> Ray argues that there was no substantial change in material circumstances warranting modification, and that the juvenile court improperly relied on information outside the record. On our de novo review, we find the father's ongoing illegal drug use was a substantial change in circumstances warranting modification, even without considering the information allegedly outside the record. Therefore, we affirm the juvenile court's order.

**I. Facts and Procedural Background.**

The Iowa Department of Human Services (DHS) has been involved with this family since at least 2000.<sup>2</sup> The children have been adjudicated children in need of assistance (CINA) on several occasions, most recently in 2006. In January 2008, the juvenile court recited the unfortunate history of this family, including numerous instances of substance abuse and lack of supervision by the parents, but added, "Even with all these issues, this Court believes this family deserves a last chance at reunification." Thus, the juvenile court authorized a trial home placement with Ray, the father. This order was based on a case plan in which the parents agreed they would refrain from illegal drug use. In September 2008, the court formally modified the dispositional order to provide for placement with Ray, under the protective supervision of DHS. This disposition

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<sup>1</sup> The mother also participated in the modification hearing, but her appeal was dismissed as untimely.

<sup>2</sup> Ray also had three older children previously removed from his care.

continued, even when Ray tested positive for marijuana in March 2009 and July 2009. On July 15, 2009, the juvenile court “reluctantly” continued the prior disposition.

On August 28, 2009, the children were temporarily removed from Ray’s care and placed in foster care. The police had executed a search warrant on the residence the day before and found marijuana residue; Ray had tested positive for marijuana and methamphetamine; the mother was again living with Ray and had also had positive drug screens; and Ray admitted having used a belt on the children. The children themselves reported ongoing drug use by their parents. Thus, on September 1, 2009, the State sought to modify the prior dispositional orders.

Modification hearings occurred on September 30, 2009, December 10, 2009, and February 26, 2010. During this time, Ray continued to have regular visitation with the four children. The children generally made progress in academics and in their social behaviors after being placed in foster care.

While the modification proceeding was pending, Ray had positive marijuana drug screens in November 2009 and January 2010. He also missed a drug screen appointment in February 2010. Ray’s hearing testimony suggested he did not think his marijuana use was a significant parenting issue. As he put it, “My kids weren’t in any immediate danger because I made a choice to take a couple of hits off a joint.” Ray was unemployed at the time of the last modification hearing and did not have a valid driver’s license.

Ray’s testimony summarized his approach to parenting as follows:

Q. What rules do you have in your home? A. Well, basically, when the girls came home I had three basic rules. And rule number one, you don't do anything or go anywhere without permission from me. Number two was if you had any questions, refer to rule number one. And that was pretty much it, you know. I let the girls pretty much go and do as they wanted unless they got in trouble. Then they got grounded.

A social worker for the family testified that she believed the children could be returned to their parents and that she saw no safety concerns with Ray. Yet she also acknowledged the positive drug tests, the "very dysfunctional relationship" between the two parents, and the eight founded prior child abuse reports. She agreed the parents' marijuana use "undermines their authority" with respect to their children.

The guardian ad litem supported the State's requested modification of the dispositional order, although she admitted the children were stating in February 2010 they wanted to return home. As noted by the juvenile court, the children's views were not consistent. In September 2009, the two oldest children had expressed a desire to the court to remain in foster care because they felt safer there.

On June 25, 2010, the juvenile court entered its ruling. It modified the prior dispositional orders to provide that DHS would have custody of the children for foster family care or other suitable other adult placement. The court also granted DHS discretion, however, to begin an immediate trial home placement pursuant to a transition plan. Ray 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 children. *Id.*

### **III. Analysis.**

To modify a dispositional order, “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 or children.” *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005). Ray first challenges whether the State established by clear and convincing evidence a substantial change in material circumstances. We believe the State carried its burden.

The record shows that Ray engaged in ongoing illegal drug use, even during the pendency of this modification proceeding. He also downplayed the significance of this drug use, despite voicing concerns that the two oldest of these four children may have started to use marijuana as well. As the family counselor admitted, it “undermines authority” when a parent is engaging in the same illegal conduct that he urges the children to refrain from. This substantial change in material circumstances warranted modification of the dispositional order.

The record also reflects that the change in custody to DHS is in the best interests of the children. Although the situation for these children is not ideal, their lives have become more stable in foster care than they were while living with Ray and the mother.

Ray’s other argument is that the juvenile court erred in relying on an alleged incident that was not part of the record. At page three of the juvenile court’s order, there is a lengthy paragraph describing events surrounding the

birth of one of the mother's other children. The paragraph appears to be somewhat of a non sequitur, since the child in question was not part of this proceeding and no hearing testimony addressed these events. However, even if the record does not support this paragraph, it does not alter our conclusion, on our de novo review, that the State established a substantial change in material circumstances warranting modification of the dispositional order. Reading the juvenile court's order as a whole, it is clear that the court weighed the evidence carefully and gave the parents the benefit of the doubt.

For the foregoing reasons, we affirm the modification order of the juvenile court.

**AFFIRMED.**