

**IN THE COURT OF APPEALS OF IOWA**

No. 0-857 / 10-1357  
Filed December 22, 2010

**IN THE INTEREST OF V.C.,  
Minor Child,**

**V.C., Minor Child,  
Appellant.**

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Appeal from the Iowa District Court for Buchanan County, Daniel L. Block,  
Associate Juvenile Judge.

A child appeals the juvenile court's modification order removing him from  
his mother's home and placing him in group foster care. **AFFIRMED.**

Linnea Nicol, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Allan W. Vanderhart, County Attorney, and Karl Moorman, Assistant  
County Attorney, for appellee.

Sheila Freerksen, Hazelton, for mother.

Steve Ristvedt, Independence, for father.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**TABOR, J.**

A thirteen-year-old child appeals the juvenile court's modification order removing him from his mother's home and placing him in group foster care. He argues the juvenile court violated his due process rights by denying his request for a continuance at the modification hearing and further contends the Department of Human Services (DHS) failed to engage in reasonable efforts to reunify him with his mother. Because we conclude the DHS engaged in reasonable efforts and the juvenile court did not abuse its discretion in denying the child's motion for a continuance, we affirm.

***I. Background Facts and Proceedings***

V.C. was born in 1997 and has an extensive history of engaging in negative behaviors including aggression toward others, cruelty to animals, stealing, lying, sexual conduct with a seven-year-old girl, attempted suicide, and setting fires in his mother's home. V.C. has been hospitalized for his behaviors on three occasions. In 2008, police investigated a complaint that then eleven-year-old V.C. had engaged in sexual activity with a seven-year-old girl, which V.C. admitted. On September 15, 2008, a petition alleging V.C. to be a child in need of assistance (CINA) was filed with the juvenile court, citing his sexual abuse of a younger child. At the adjudicatory hearing on October 3, 2008, V.C.'s mother, with whom he had resided, requested V.C. be removed from her custody due to his emotional and behavioral problems, "most recently manifesting themselves in inappropriate sexual conduct."

The juvenile court adjudicated V.C. a CINA under Iowa Code section 232.2(6)(k) on October 3, 2008, on the ground that the mother “for good cause desires to be relieved of his . . . care and custody.” The court also ordered temporary removal of V.C. pursuant to Iowa Code section 232.96(10) concluding removal was necessary to avoid imminent risk to the child’s life or health, explaining “[c]ontinuation of the child in the child’s home would affect the child’s welfare by allowing his mental and behavioral problems to continue resulting in inappropriate sexual actions.” The court determined placement in shelter care was necessary “due to his mental disorders and sexually aggressive acts.”

After a psychological evaluation, which recommended inpatient treatment for V.C., the juvenile court transferred custody to the DHS for placement in a Psychiatric Medical Institute for Children (PMIC). V.C. was admitted to the PMIC program on December 29, 2008, but did not make the “progress that [DHS] had hoped that he would make during his time at the PMIC unit” before being discharged from the program and returned to his mother’s care on August 18, 2009. It was the “PMIC’s belief as well as the [DHS’s] that [V.C.] [was] not benefitting from the PMIC program.” Both the PMIC and DHS recommended the court return V.C. home, explaining “[t]hese recommendations are not due to the success that [V.C.] has had at PMIC but rather because of the lack of benefits that he is receiving from the program.”

When V.C. returned to his mother’s home, his behavior deteriorated. He was caught stealing from relatives, from others in the community, and from school; he took a knife to school; and on another occasion he physically attacked

his older brother. In May 2010, the court expressed reservations about leaving V.C. in his mother's home—citing his harmful behavior and his mother's inability to provide the highly structured environment necessary for V.C.—and scheduled a modification hearing for August 2010.

In July 2010, V.C. met with Dr. George Harper for a full psychological evaluation. Dr. Harper diagnosed V.C. with bipolar disorder, attention-deficit/hyperactivity disorder, conduct disorder, and antisocial and histrionic personality features. Dr. Harper recommended V.C. be referred to a highly structured treatment program such as the Four Oaks Phase Program to encourage more positive behaviors. He noted that V.C. "has suffered from major emotional and behavioral problems since a very early age" and made the following observations:

[V.C.] participated in numerous psychological and/or psychiatric evaluations as well as inpatient and outpatient treatment. These interventions appear to have made little difference in this youngster's development or the frequency and intensity of his inappropriate behaviors. He appears to be capable of behaving himself in a highly structured setting but quickly regresses to prior levels of mental health problems when he is returned home. Thus, it does not appear that he can continue in his home environment without engaging in serious behavioral problems and experiencing rather severe extremes of mood. Unfortunately, the prognosis for this youngster is extremely poor.

Dr. Harper described V.C. as "quite prone to exhibit increasingly anti-social behavior," and explained he "has failed to develop an effective conscience which can help him regulate his behavior in the absence of external controls." He noted further that V.C.'s mother had open heart surgery in July and was not able to provide the structure and consequences needed for V.C. at that time.

On August 16, 2010, V.C. and his mother appeared before the juvenile court for a modification-of-disposition hearing. At the hearing, the State recommended the juvenile court modify the custodial order and transfer custody from the mother to DHS for purposes of group foster care and that the family continue to receive child-welfare services. The mother agreed with the State's recommendations, expressing her increased frustration with V.C.'s defiance of rules and expectations in her home.<sup>1</sup> V.C. resisted, requesting a continuance so "evidence could be heard on the issue of whether or not there is a true safety concern for [V.C.] in the home or whether a less restrictive placement would be in family foster care." He also requested placement in family foster care.

In addition, V.C. argued DHS failed to make reasonable efforts to achieve permanency and reunify him with his mother, as evidenced by the fact he had not received mental health counseling for the two months preceding the hearing because the counseling center through which he obtained services had closed in June. V.C.'s mother placed him on a waiting list for counseling and medication management at an alternative center and was awaiting a return phone call.

The juvenile court denied V.C.'s requested continuance, concluded the DHS continued to exercise all reasonable efforts to achieve permanency for the child, and modified V.C.'s placement to group foster care. The court explained group placement was "the least restrictive placement" and was "in the child's best interests." The court concluded that placing V.C. with either parent would be contrary to V.C.'s welfare "[b]ecause of concerns regarding the child's willful

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<sup>1</sup> V.C.'s father, who did not appear personally but had counsel at the hearing, took no position on the recommendations.

verbal and physical aggression, refusal to comply with parental rules and history of mental health concerns.” The court also explained, “[a] family foster home is not a suitable option for the court because of the child’s aggressive and manipulative behaviors.” The court noted V.C. had a history of antisocial and aggressive behaviors and noted that although V.C. completed PMIC programming and intensive behavioral modification treatment, V.C.’s behaviors had deteriorated since returning to his mother’s home as evidenced, in part, by the fact he made “numerous suicidal ideations and threatened serious bodily harm upon his siblings.” The court explained V.C. is “openly defiant to caregivers . . . willfully violates parental rules and engages in behaviors which place himself and those unable to avoid contact with him at risk.” The court also noted the mother was unable to provide adequate supervision because of her work schedule. V.C. returned home temporarily after the hearing and was subsequently placed in group foster care at the Four Oaks Phase program on August 23, 2010.

V.C. appeals, arguing the juvenile court violated his due process rights by denying his request for a continuance at the modification hearing. He also argues the DHS failed to engage in reasonable efforts to reunify him with his mother. V.C. asks us to reverse the juvenile court order and remand the case for further evidentiary proceedings on the issues of the least restrictive placement and the DHS’s reasonable efforts.

## **II. Scope and Standard of Review**

We engage in de novo review of CINA proceedings. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the juvenile court's fact findings, especially when considering the credibility of witnesses, but we are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Our paramount concern remains the best interests of the child. *K.N.*, 625 N.W.2d at 733.

The child alleges a due process violation. If that constitutional challenge were preserved, our review would be de novo. See *In re N.N.E.*, 752 N.W.2d 1, 6 (Iowa 2008). We review a court's ruling on continuance motions for abuse of discretion. *Michael v. Harrison County Rural Elec. Coop.*, 292 N.W.2d 417, 419 (Iowa 1980); *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). We note a court's ruling on a continuance motion is "presumptively correct and [a] complainant has a heavy burden to overcome the presumption of regularity." *Michael*, 292 N.W.2d at 419. With respect to rulings on motions for continuance, "trial courts are accorded broad discretion and absent clearly shown abuse thereof we will not interfere." *Id.* (citation omitted). To establish abuse of discretion, the complainant must show the court's action was unreasonable under the circumstances and "[o]rdinarily, an abuse is found to exist only where there is no support in the record for the trial judge's determination." *Id.*

### **III. Analysis**

#### **A. Denial of Continuance**

V.C. asserts the juvenile court violated his federal and state constitutional due process rights when it denied his request for a continuance at the modification hearing, thereby failing to hear evidence that would mitigate his placement to the less restrictive family foster-care option.<sup>2</sup> V.C. argued a continuance would have allowed him to present evidence supporting placement in family foster care rather than group care. He asks us to reverse the juvenile court order and remand the case for an evidentiary proceeding on the issue of the least restrictive placement. The State contends V.C. failed to preserve error on his constitutional argument because he “never alluded to any federal or state constitutional right in support of the continuance motion.” Alternatively, the State argues V.C. failed to show an abuse of discretion or prejudice.

We decline to reach V.C.’s due process claim, because it was not raised in the juvenile court. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.”).

Reviewing the juvenile court’s ruling under an abuse-of-discretion standard, we conclude the juvenile court did not abuse its discretion when it denied V.C.’s motion to continue the modification hearing. V.C. has not satisfied his heavy burden of showing the denial was unreasonable under the

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<sup>2</sup> We note that V.C.’s challenge does not involve Iowa Code Chapter 232’s requirement that “the court shall make the least restrictive disposition appropriate considering all the circumstances of the case.” Iowa Code § 232.99(4).



circumstances, nor has he demonstrated he suffered an injustice. *Michael*, 292 N.W.2d at 419; *C.W.*, 554 N.W.2d at 281.

The juvenile court's denial of a continuance was reasonable in light of the circumstances of the case, specifically V.C.'s increasingly defiant and violent behavior while at home; his refusal to cooperate with Family Safety, Risk, and Permanency (FSRP) service providers; the history documenting V.C.'s need for strict supervision; his mother's inability to provide a highly structured environment because of her recent open-heart surgery; and the psychologist's "extremely poor" prognosis for the child. Granting the motion would merely have delayed matters to the detriment of the child. V.C. has been unable to control his aggressive, manipulative, and violent behavior while receiving services at home or while placed in the PMIC program. He has demonstrated minimal, if any, progress despite years of extensive services. His continued defiance and danger to self and others—which have persisted despite extensive outpatient and inpatient services—coupled with his need for a highly structured environment that cannot be implemented at home, render V.C. in need of immediate help. On the basis of this record, we cannot conclude the juvenile court abused its discretion in declining to grant V.C.'s motion for a continuance.

We also note V.C. had notice of the modification hearing and an opportunity to be heard. V.C. had known of the August modification hearing since May 2010. And V.C. was aware of the court's concern with his increasingly defiant and perilous behavior while at home, as well as the mother's inability to

provide the strict supervision V.C.'s negative behavior required—the court articulated both concerns at the May 2010 hearing.

Moreover, V.C. failed to show he suffered an injustice when he was denied a continuance. The record demonstrates his mother's current inability to provide the highly structured environment his adverse behavior requires and supports the juvenile court's observation that "[a] family foster home is not a suitable option . . . because of the child's aggressive and manipulative behaviors." In light of the foregoing, V.C. has not demonstrated the juvenile court abused its discretion in declining to grant his motion for a continuance.

***B. Reasonable Efforts***

V.C. argues the DHS failed to engage in reasonable efforts when he did not receive counseling or medication management during the two months preceding the modification hearing. V.C. argues the center's closing "does not absolve the [DHS's] obligation to provide reasonable efforts, specifically mental health treatment." He asks us to reverse the juvenile court and remand the case for an evidentiary proceeding on the DHS's reasonable efforts.

The State contends V.C. failed to preserve error because he did not voice concern about the lack of counseling to the juvenile court before the August 2010 modification hearing, despite the center closing in June. Alternatively, the State argues V.C. cannot show prejudice resulted from the lack of counseling during the two months. The State reasons improvement in V.C.'s behavior was necessary for reunification with his mother and notes that "[m]onths if not years of counseling [has] . . . produced little improvement in his behavior."

Assuming error was preserved, we conclude evidence supports the juvenile court's determination that DHS has made reasonable efforts to reunify V.C. with his family. Although V.C. was not receiving services through the Backbone Counseling Center as a result of its closing, Dr. Harper's report to the court, dated July 29, 2010, indicated V.C. and his family continued to participate in FSRP services through Lutheran Services in Iowa on a weekly basis. Dr. Harper also noted, however, that V.C. refused to cooperate with the services, choosing instead to barricade himself in his bedroom using his dresser. In addition, V.C.'s mother had placed V.C. on the waiting list for medication management and counseling at the Abbe Center and was awaiting a return call to set up an appointment.

We also note that V.C. has received a variety of services including PMIC placement, shelter care, protective supervision, family-centered therapy and skill development, individual mental health counseling and medication management, outpatient mental health evaluation and programming, FSRP services, and Anger Replacement Training through Four Oaks, among others. In light of Dr. Harper's observation that "numerous psychological and/or psychiatric evaluations as well as inpatient and outpatient treatments . . . appear to have made little difference in [V.C.'s] development or the frequency and intensity of his inappropriate behaviors," it is arguable the DHS would fail to discharge its reasonable-efforts duty if it did *not* attempt to secure a more highly structured program for V.C.'s benefit.

In light of the extensive services provided to V.C. and the ongoing weekly FSRP services, in which V.C. refused to participate, we cannot say that V.C.'s temporary placement on a waiting list for services through another agency, which resulted from the closing of his original care provider, amounts to a failure on the part of DHS to make reasonable efforts.

**AFFIRMED.**