

**IN THE COURT OF APPEALS OF IOWA**

No. 1-131 / 11-0033  
Filed March 7, 2011

**IN THE INTEREST OF R.P. and L.P.,  
Minor Children,**

**L.M.P., Mother,  
Appellant.**

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

A mother appeals from the juvenile court order modifying the dispositional  
order in a child-in-need-of-assistance proceeding. **AFFIRMED.**

Caitlin Slessor of Nazette, Marnier, Nathanson & Shea, L.L.P., Cedar  
Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, and Lance Heeren, Assistant  
County Attorney, for appellee.

Daniel Bray of Bray & Klockau, P.L.C., Iowa City, for father.

Julie Trachta of Linn County Advocate, Inc., Cedar Rapids, attorney and  
guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

**EISENHAUER, J.**

A mother appeals from the juvenile court order modifying the dispositional order to transfer custody of her children to the Iowa Department of Human Services (DHS) for placement outside the home. She contends the State failed to prove a substantial change in circumstance occurred following entry of the dispositional order. She also contends the transfer of custody was not in the children's best interest. Our review of child-in-need-of-assistance (CINA) proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 14 (Iowa 2008).

There are two children at issue in this case: R.P., born in April 2002, and L.P., born in July 2009. Their mother and father both have histories of substance abuse and are involved in a chaotic relationship marked by domestic violence. The parents are currently in the midst of a second dissolution of marriage proceeding. They had previously initiated a dissolution action and later dismissed it after reuniting.

The children were adjudicated in need of assistance in May 2010 pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2009). The dispositional order allowed the parents to equally share custody of the children, but provided they were not to violate the no-contact order in place between them or to place the children in the middle of their hostility by speaking negatively about each other or using the children to try to obtain information about the other parent.

Following the CINA adjudication, the following incidents occurred. In August 2010, the mother assaulted the father and a female friend during a custody exchange that violated the terms of the no-contact order. In September

2010, the mother posted a photo of R.P. and the father on the Internet. They were sporting Mohawk-style haircuts dyed blond and black. R.P. had asked to have his hair dyed. She made inappropriate comments on the photo calling the father a “degenerate,” among other things. She also left inappropriate comments on photos R.P. posted to Facebook of a child the father had with another woman. Finally, in October 2010 the mother aborted a child conceived with the father. R.P. somehow learned of the abortion and told his cousin that his mother had a baby in her tummy but was going to “kill it.”

On October, 18, 2010, the State sought modification of the dispositional order. The guardian ad litem agreed with the DHS recommendation to modify the dispositional order. The father stipulated modification was in the children’s best interest. On December 20, 2010, the court entered its order granting modification after finding the parents were incapable of providing for the children’s emotional needs.

In order to modify custody or placement, there must be a material and substantial change of circumstances. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). The mother contends the State failed to prove circumstances have changed since entry of the dispositional order because the issues that existed at the time of modification were the same that led to the CINA adjudication. We disagree. The dispositional order allowed the parents to share custody of the children on an alternating schedule. The order also provided

the parents shall not place the children in the middle of their issues and shall not question the children for the sole purpose of obtaining information about the other parent and shall refrain from speaking

negatively about the other in the presence or within the hearing of the children.

In its modification order the court found: “The parents are consumed by their personal emotional needs and continue to feed off their negative dysfunctional relationship to the detriment of their children”.

The parents’ disregard of the directives set forth in the dispositional order, the seeming escalation of their vitriolic behaviors, and the effect it has on the children is a substantial change in circumstance that warrants modification of the prior court order.

The mother next contends modification is not in the children’s best interests. In modification of a dispositional order relating to child custody, the focal point is the best interests of the children. *In re C.D.*, 509 N.W.2d 509. 511 (Iowa Ct. App. 1993). The children’s best interests are to be determined by looking at their long-range as well as immediate interests. *Id.* at 511-12. A parent’s past performance provides insight into this determination. *Id.*

We conclude it is in the children’s best interests to be removed from the parents’ care. The parents’ behavior is emotionally traumatizing to the children and R.P. already exhibits a flat affect when the parents fight in his presence, as though their behavior is “normal” for parents. Continued exposure to this behavior is damaging to the children. Accordingly, we affirm the district court order modifying the dispositional order to transfer custody of the children to the DHS for placement outside the home.

**AFFIRMED.**