

IN THE COURT OF APPEALS OF IOWA

No. 1-517 / 11-0755
Filed July 13, 2011

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

**W.D.C., Father,
Appellant.**

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

A father appeals from the ruling denying his motion to modify the
dispositional order. **AFFIRMED.**

Ryan P. Tang of the Law Office of Ryan P. Tang, P.C., Cedar Rapids, for
appellant father.

John Mossman, Vinton, for mother.

Jennifer L. Zahradnik of Kollmorgen, Schlue & Zahradnik, P.C., Belle
Plaine, for appellees intervenors.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, David C. Thompson, County Attorney, and Jowanda Peterson,
Assistant County Attorney, for State.

Troy Powell, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

This is an appeal from a ruling denying the father's request to modify a prior dispositional order. The prior order, consented to by the father, placed A.B. with the maternal grandparents. We agree the father, a noncustodial parent, has not shown a change in the circumstances warranting a modification of the prior dispositional order and affirm.

A.B. was born in November 2008. Nicole is A.B.'s mother. Paternity testing, which occurred in February 2009 during a child support recovery action, confirmed Wallace was A.B.'s biological father. Wallace is married to Amanda and has seven children by seven different women. According to Wallace, A.B. was conceived "when we were drunk" and he had wanted Nicole to terminate the pregnancy.

Nicole and A.B. resided with Nicole's parents most of the time. The maternal grandparents have provided A.B. with care and stability throughout her life. A.B. came to the attention of the Iowa Department of Human Services (DHS) in February 2010 when a child abuse assessment was founded against Nicole. A.B. was adjudicated a child in need of assistance (CINA) on July 13, 2010, as a result of Nicole's ongoing substance abuse issues. At the time of adjudication, A.B. was in a voluntary placement with her maternal grandparents.

At the dispositional hearing in August 2010, all parties, including the father, agreed it was in A.B.'s best interests that she remain in the care of her maternal grandparents. Temporary legal custody of A.B. was formally placed with the maternal grandparents under the dispositional order filed August 11, 2010.

On December 21, 2010, Wallace filed a motion to modify the dispositional order. At the April 5, 2011 modification hearing, Wallace stated he met A.B. for the first time in about April 2009. In the first two years of her life he saw A.B. “about an hour and a half.” He was ordered to pay child support in April 2009 and had paid a total of \$185 at the time of the hearing. Wallace began to establish a relationship with A.B. and visit with her regularly beginning in the spring of 2010 when DHS became involved. At the time of the hearing, A.B. visited Wallace from Wednesday to Sunday every other week. Wallace understands the goal of the CINA proceeding is for A.B. to be reunified with her mother, but does not believe he is under any obligation to facilitate that goal.

Vanessa Abrams, a social worker for the DHS, testified it was the DHS’s position that “for [A.B.’s] the best interests for her is for her to have contact with all of the parties. And if she can’t be with her mother, then it would be with the father, with a parent.” She stated it was the DHS’s position that the father’s request for modification should be granted. She acknowledged the goal was still reunification with the mother, the mother was doing much better, and the reunification goal is achievable. She further stated having A.B. transition to another home before she might be transitioning to her mother’s home “would be hard” for the child. Abrams stated there had not been any major changes since the dispositional hearing.

The juvenile court denied the motion to modify the dispositional order. The court wrote:

[The father] by his present Application appears to claim that his status as parent is alone sufficient to transfer [the child’s] custody to him because it is a less restrictive placement than relative care as

long as a parental bond has been established and his home is suitable and safe for the child. The issue is not that simple. Unlike disposition, the standard for modification is not that of removal from a parent, custodian or guardian but rather whether there is a change in circumstance warranting transfer of custody in the child's best interest. In this case, [the child] was in her mother's sole care at the commencement of juvenile court involvement as well as disposition. The permanency goal therefore remains reunification with Nicole rather than reunification or placement with any biological parent.

The court noted, "Because placement of [the child] with her father will not defeat Nicole's right to pursue reunification under the existing case plan, any transfer of custody of placement of [the child] at this time is at best temporary." The court thus denied the motion to modify the prior disposition. This appeal followed.

We review of juvenile court orders in CINA proceedings is de novo. Iowa R. App. P. 6.907. Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g).

The father asserts modification should have been ordered because he is a "parent" and not merely a "relative" and thus has a fundamental right to parent his child. We acknowledge the parent-child relationship is constitutionally protected under the fourteenth amendment to the United States Constitution. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972); *In re K.L.C.*, 372 N.W.2d 223, 226 (Iowa 1985). But,

[t]he State's interest is clear as well. The State has an interest in protecting the health, safety and welfare of the children within its borders. As such, the parent's interest in maintaining the family unit is not absolute and may be forfeited by certain parental conduct. To abrogate the parent's protected interest, the State

must meet the requirements of the fourteenth amendment due process clause.

In re T.R., 483 N.W.2d 334, 337 (Iowa Ct. App. 1992) (citations omitted). The procedural safeguards of notice and an opportunity to be heard are written into the CINA statutory provisions. See *In re K.L.C.*, 372 N.W.2d at 226-27; see also *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000); *In re T.R.*, 483 N.W.2d 334, 337 (Iowa Ct. App. 1992).

The modification of a dispositional order is provided for in Iowa Code section 232.103 (2011).¹ To modify a dispositional order, good cause must be shown. See *id.* We have held a party seeking a modification of the custody provisions of a prior dispositional order must show the circumstances have so materially and substantially changed that the best interests of the child requires such a change in custody. See *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005); *In re C.D.*, 509 N.W.2d 509, 511 (Iowa Ct. App. 1993).

¹Iowa Code section 232.103 provides in pertinent part:

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

....

4. The court may modify a dispositional order. . . and release the child if the court finds that any of the following circumstances exist:

a. The purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment.

b. The purposes of the order cannot reasonably be accomplished.

c. The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.

d. The purposes of the order have been sufficiently accomplished and the continuation of supervision, care, or treatment is unjustified or unwarranted.

Here, the permanency goal—at the time of the dispositional hearing and now—is for A.B.’s reunification with her mother. The mother was the custodial parent at the time of removal and the CINA adjudication.² Visits with Wallace have occurred under DHS supervision and have increased during these proceedings. See *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996) (noting the nature and extent of visitation is always controlled by the best interests of the child). But the permanency goal is to return the child to the mother. We agree with the juvenile court that under section 232.103, good cause to modify is not shown; modifying the dispositional order to place the child with the father, who has never before had custody of the child, is not in the child’s best interests. Iowa Code § 232.103; see also *In re B.L.*, 470 N.W.2d 343, 345-46 (Iowa 1991) (explaining that mother of unacknowledged child has sole custody unless the court orders otherwise). The father’s reliance on *In re T.D.E.*, 796 N.W.2d 447 (Iowa Ct. App. 2011), is misplaced as it does not address a request to modify a dispositional order.

AFFIRMED.

² We acknowledge the father’s claim that to treat him simply as a “relative” rather than a “father” in our determination is a violation of the equal protection clauses of Iowa and United States Constitutions. However, the issue was not addressed by the juvenile court and, thus, was not preserved. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”). The preservation-of-error rule applies with equal strength to constitutional issues. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002).