

**IN THE COURT OF APPEALS OF IOWA**

No. 1-788 / 11-1327  
Filed November 9, 2011

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

**R.S.T., Father,  
Appellant.**

---

Appeal from the Iowa District Court for Hancock County, Gregg R. Rosenblatt, District Associate Judge.

A father appeals the juvenile court's modification order in a children-in-need-of-assistance proceeding. **AFFIRMED.**

Jane M. Wright, Forest City, for appellant father.

Theodore Hovda, Garner, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Karen Kaufman-Salic, County Attorney, for appellee State.

Sarah Reindl of Papajohn, Shriver, Eide & Nelson, P.C., Mason City, for minor children.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

**DOYLE, J.**

In this children-in-need-of-assistance (CINA) proceeding, the father appeals the juvenile court's modification order removing his sons from his care. We affirm.

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

R.T. is the father and D.T. is the mother of a daughter<sup>1</sup> born in 1994 and two sons, H.T., born in 1997, and C.T., born in 1998. The parents have a long history of verbal and domestic conflict. The parents divorced several years ago and live apart, but their homes are located near one another. Despite their divorce, the parents have continued "an enmeshed, unhealthy, and volatile relationship with one another." The children lived with their mother after the parents' divorce, though the children frequented both homes.

The father and H.T. have been diagnosed with type I diabetes, which requires regular monitoring of insulin levels. H.T. now regulates his insulin using an insulin infusion pump, through which H.T. receives a continuous amount of insulin over a twenty-four hour period of time. However, H.T. is required to input data into the pump to adjust the insulin amounts he should receive after consuming certain types of foods or sugars. Also, with the pump therapy, H.T. is required to change his infusion sites every three days.

The children came to the attention of the Iowa Department of Human Services (Department) in January 2010 due to the parents' ongoing conflict, as well as a the children's conflicts with their parents and one another. H.T. and C.T. do not get along at all, and the parents were generally not able to control the

---

<sup>1</sup> The daughter's placement is not at issue in this appeal.

children. C.T. is sensitive to conflict, and he was often fearful of H.T. In February 2010, the children were adjudicated CINA with the parents' agreement.

In May 2010, the juvenile court filed its dispositional order setting forth a rotating custody schedule for C.T. and H.T. One boy was to live with the father during the week while the other lived with the mother during the week, alternating between the parents' homes weekly. On weekends, the boys lived together at one parent's home, alternating homes every weekend. The court also ordered the parents to follow all recommendations contained in their psychological evaluations, including participating in individual therapy.

On September 24, 2010, the State filed its petition to amend the court's dispositional order to place the parents' daughter in foster care and to place the boys in the care of the father. The parents were "generally in agreement with review and modification recommendations made by the Department." The court again ordered the parents to follow through will all recommendations contained in their psychological evaluations.

Following a January 2011 review hearing, the juvenile court entered its review order continuing the boys' placement with the father. The court's order noted that the children appeared to be settling in to the father's home, but stated it was "hoped that [H.T.] will be more successful with monitoring his diabetes, and it is crucial that his blood sugar numbers, diet, and insulin be monitored." The court's order found neither parent had participated in individual therapy as previously ordered, and it again directed the parents to follow through with the recommendations contained in their psychological evaluations.

In the court's May 19, 2011 review order, the court stated that H.T. "has continued to have some difficulty with his diabetes," but that the situation "may be improving somewhat." The court continued placement of H.T. and C.T. in the father's care.

On July 3, 2011, while both boys were at the mother's home, H.T. experienced a seizure and fell from his bed. C.T. placed a call to 911, and H.T. was taken to the hospital. It was determined H.T. suffered the seizure because he had a very low blood sugar level as a result of giving himself too much insulin. H.T. did not have his blood sugar tester with him at the mother's home.

On July 6, 2011, the State filed its motion to modify the dispositional order, requesting the boys be placed in foster care. A temporary removal hearing was held two days later. The Department's caseworker testified the conflicts between the parents had worsened. The worker also stated that conflicts between the parents and the children, as well as the conflict between the boys, had continued. The worker testified that C.T. was afraid of H.T. and H.T.'s seizure had "rather traumatized" C.T. The worker stated the father was supposed to schedule appointments with the children's psychologists, but had not done so. Additionally, the worker testified that if either parent had looked at H.T.'s insulin log history, the parent would have been able to see H.T. had been taking insulin at inappropriate times. The worker requested the boys be placed in foster care, and she recommended each boy be placed in a separate home.

The mother testified that H.T. had specifically asked the father to get his tester from the father's home before the father went out of town, and the father told H.T. "tough." The mother stated she did not interfere or insist the father get

the tester to avoid an argument with the father. The father testified he did not deny H.T. his tester, and he blamed the mother for not having a tester and supplies for H.T. at her home.

After hearing the testimony, the court denied temporary removal of the boys from the father's care, finding no imminent danger to the children in the father's care at that time, explaining:

There are a lot of ongoing and continuing issues and, frankly, I'm not sure if they're much better or much worse than they were six months or a year ago when it comes to communication and such things. The stories differ very widely on what's happening and is hard for me to determine credibility. . . .

[The father], I think you need to probably, you know, work better, keep better track of some of the things related to diabetes, you know, just on a daily basis. . . . [H.T.] had a crash and ended up in the hospital, which was obviously a big deal.

The court then set a modification hearing in August 2011.

On July 14, 2011, H.T. had another seizure due to low blood sugar, again caused by his administering himself too much insulin. At that time, C.T. was home alone with H.T. at the father's house while the father was at work. C.T. once more had to call 911.

At the August 5, 2011 modification hearing, the Department again requested removal of the children from the father's care. The Department's worker testified there continued to be conflict between the boys and the parents. She testified that despite the continued offering of services "in an effort to continue to give [the family] ideas of how they can maybe better handle [conflict,] . . . [i]t hasn't been very effective." She stated C.T. was again upset about his brother having a seizure and having to call 911. She testified that she believed having the boys out of the home would allow them "to stabilize

themselves. With them being in a stronger position for themselves, working along with mom and dad, hopefully that would make reunification more successful. Clearly, mom and dad would need to continue working with services as well.”

The father testified he had been keeping track of H.T.’s blood sugar levels and H.T.’s numbers fluctuated a great deal, even when he was under the care of the hospital staff. The father acknowledged the boys were home by themselves during the week when he was at work. The father also submitted several exhibits into evidence, including a letter from H.T.’s doctor.

H.T.’s doctor stated in her letter that she had worked with H.T. since 2008, and since that time H.T. had continued to have “suboptimal diabetes control.” Nevertheless, the doctor noted that H.T. was an adolescent, and adolescents’ control of their diabetes “can become more difficult to achieve” and their “physical and psychosocial needs . . . play a role in this.” She also remarked that a child’s summer schedule, which often has a change in sleeping hours and the amount of activity in which the child engages, can affect blood sugar levels and require insulin adjustments. Although she explained that “type I diabetic patients who have one hypoglycemic seizure are at a higher risk of developing another hypoglycemi[c] seizure within a short period of time, usually within a month,” she stated H.T. was at a point where he could start self-monitoring his insulin levels. She also noted the father had been present at most appointments and had utilized after-hour call services when necessary. The doctor did not express an opinion as to whether she believed H.T. should be removed from the father’s

care, but noted she was a mandatory reporter. The doctor has made no reports concerning the father.

On August 15, 2011, the juvenile court entered its ruling placing the boys in foster care. The court found there had been a substantial change in circumstances in the case, finding H.T.'s two hospitalizations, combined with the worsening relations between all family members and the lack of a structured schedule for the boys over the summer "caused a deterioration in the [boys'] overall situation" and "presented concerns for their safety." The court found

it [was] contrary to the [boy's] welfare to remain in their present placement and that placement in family foster care, preferably in separate foster homes, would be in the [boys'] best interests. This would remove several of the present barriers in this case toward progress.

It is likely the children would have more consistent supervision, the boys would be able to participate more consistently in services, and the [boys] would be removed from the present tensions present in their mother's and father's homes. A trained, objective foster parent would also be able to assess [H.T.'s] behavior on a daily basis, and be able to observe [H.T.'s] actions and demeanors.

The father appeals. He contends the juvenile court erred in finding a substantial and material change in circumstances warranted removal, removal was in the boys' best interests, and the boys should be placed in separate foster homes. He also asserts he was not provided reasonable services to prevent the boys' removal from his care.

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

Our review of CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). Although we are not bound by them, we give weight to the juvenile court's findings of fact, especially when considering credibility of

witnesses. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our fundamental concern is the best interests of the children. *Id.*

### ***III. Discussion.***

#### ***A. Modification.***

The father first contends the juvenile court erred in modifying the prior dispositional order to place the boys in foster care. He alternatively argues placing one child in foster care would alleviate the need to place the other child in foster care. We disagree.

The modification of a dispositional order is provided for in Iowa Code section 232.103 (2011). 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).

Upon our de novo review, we agree with the juvenile court there had been a substantial change in circumstances in the case justifying the boys' placement in foster care. The testimony at both hearings evidences there is little structure in the father's home for the boys and the conflicts between the parents, between the parents and the boys, and between the boys themselves have not only continued, but worsened. By all accounts, C.T. is very sensitive boy who is afraid of his siblings, yet was left home alone with H.T. C.T. is also sensitive regarding H.T.'s medical condition, and rightfully so, after he witnessed H.T.'s two seizures and he himself called 911 in both instances.

It is clear H.T. is at a trying time for monitoring and leveling his insulin levels, and he is not doing so successfully, evidenced by his two seizures, one while in the father's care. Although we agree the father is knowledgeable of H.T.'s condition, H.T.'s doctor acknowledged H.T. has had "suboptimal diabetes control" since she began seeing H.T. three years ago. While H.T. is at an age where he can take an active part in controlling his condition, his two seizures indicate he needs some assistance. Now is the time to instill proper management of the condition so H.T. can learn to control his diabetes by himself and live a long and healthy life. For these reasons, we agree with the juvenile court there had been a substantial change in circumstances in the case justifying modification of the court's prior dispositional order to place both boys in foster care.

***B. Best Interests and Placement in Separate Foster Homes.***

The father next argues modification is not in the boys' best interests and alternatively the boys should not have been placed in separate foster homes. In modification of a dispositional order relating to child custody, the focal point is the best interests of the children. See *C.D.*, 509 N.W.2d at 511. 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.* Additionally, we note courts generally prefer to keep siblings together unless there are good and compelling reasons to separate them. *In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988).

We agree with the juvenile court that removal from the father's care is in the boys' best interests. The family relationships are deteriorating and are

preventing progress in the case. C.T. is afraid of H.T. and is troubled by his responsibility as to H.T.'s emergency situations. H.T.'s diabetes is not under control. At this time, given the progress and circumstances of this case, modification of the dispositional order is in the boys' best interests.

Additionally, we find there are good and compelling reasons for placing the boys in separate foster homes. The permanency goal remains for the boys to be reunified with the parents. Placement of the boys in separate foster homes at this time will give each boy time to stabilize his life and address his individual concerns. Separation of the boys from the parents and each other will also provide an opportunity for some distance while the parents and the boys attempt to repair their damaged relationships. We affirm on this issue.

***C. Reasonable Reunification Efforts.***

Finally, the father argues the State failed to make reasonable efforts to prevent removal of the boys from his care. "Reasonable efforts" are defined as

the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. . . . If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child.

Iowa Code § 232.102(10)(a). A child's health and safety shall be the paramount concern in making reasonable efforts. *Id.*

The State, through the Department, is required to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." *Id.* § 232.102(7). Nevertheless, while the State has an obligation to provide reasonable reunification services, the parent has an

equal obligation to demand other, different, or additional services prior to the hearing. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999); *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Although the father asserts he “asked [the Department] for the services of an in-home-health-care provider because of [the case] worker’s concern of the alleged deficiency in the father’s care of [H.T.],” our de novo review of the record indicates the father’s counsel first raised the question of supplying an in-home healthcare provider at the modification hearing. There is no other evidence the father ever requested, before the hearing, additional services other than those provided. We therefore find the father has not preserved error on this issue.

#### ***IV. Conclusion.***

The Iowa Code vests the decision to modify a dispositional order within the discretion of the juvenile court. See Iowa Code § 232.103(1). On our de novo review, we find the juvenile court’s modification order appropriate under the circumstances and affirm.

**AFFIRMED.**