

IN THE COURT OF APPEALS OF IOWA

No. 1-983 / 11-1404
Filed February 1, 2012

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

S.K., Father,
Appellant,

M.K., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father and mother appeal 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 father.

Lorraine Machacek, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and William Croghan, Assistant
County Attorney, for appellee State.

Ellen Ramsey-Kacena, Cedar Rapids, for minor children.

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

DANILSON, P.J.

A father and mother appeal from the juvenile court order modifying the dispositional order to transfer custody of their children to the Iowa Department of Human Services (DHS) for placement outside the home. Both contend the State failed to prove a substantial change in circumstances occurred following entry of the dispositional order. The parents also contend the transfer of custody was not in the children's best interests. Considering the parents' disregard of the directives set forth in the dispositional order, the continued and worsened health and safety conditions of the family home, and the effect these issues have had on the children, we conclude a substantial change in circumstances has occurred that warrants modification of the prior court order. We further conclude it is in the children's best interests to be removed from the parents' care. Accordingly, we affirm the court order modifying the dispositional order to transfer custody of the children to DHS for placement outside the home.

I. Background Facts and Proceedings.

There are four children at issue in this case: Am.K., born in September 2000; T.K., born in January 2004; Al.K., born in December 2007; and S.K., born in April 2010.¹ The family came to the attention of DHS in January 2006, when DHS investigated a report about unsafe conditions in the home. Following the investigation, a founded child abuse report of denial of critical care and inadequate shelter was entered identifying the mother and father as perpetrators.

¹ The mother's oldest child, S.W., born in January 1995, was never returned to her care after the mother voluntarily placed him with his maternal grandmother in 1997, following a founded child abuse report. The report alleged the mother failed to maintain a safe and sanitary home. S.W. now lives with his father.

The parents agreed to work with DHS to address their unsafe and unsanitary home. The mother had a history of depression, and she began receiving mental health treatment, including therapy. Am.K. and T.K. went to live with their paternal grandparents.²

In June 2007, DHS completed another founded child abuse report due to the same concerns that identified the parents as perpetrators.³ In September 2007, the parents stipulated that Am.K. and T.K. should be adjudicated children in need of assistance (CINA). The court allowed the children to move into an apartment with the parents, under the supervision of DHS. In December 2007, Al.K. was born. The parents stipulated to Al.K.'s adjudication as CINA in April 2009.⁴

A dispositional hearing was held in May 2009, after which the court entered an order setting specific conditions necessary for the children to remain in parental custody. Following a review hearing in August 2009, the court determined the children could remain in the family home, as the minimum sanitary and safety conditions had been met.

In December 2009, the guardian ad litem filed a written report with the court noting that the conditions of the home were deteriorating. In April 2010, the guardian ad litem filed an application to modify the disposition and remove the

² The younger children were not yet born.

³ The children continued to live at the paternal grandparents' home, but the mother provided the care for the children during the day.

⁴ Al.K. was adjudicated pursuant to Iowa Code section 232.2(6)(b) (parent has physically abused or neglected the child, or is imminently likely to abuse or neglect the child) and section 232.2(6)(g) (parent fails to exercise minimal degree of care in supplying the child with adequate food, clothing, or shelter, and refuses other means available to provide such essentials). Al.K. continued to live with the family, but family-centered services were initiated for him.

children from parental custody. The court set the application for hearing in June 2010. In the meantime, S.K. was born. When the hearing was held in June, all parties agreed the condition of the home had improved, and the guardian ad litem withdrew the request for removal. DHS decided not to pursue CINA proceedings in regard to S.K.

The family's situation again deteriorated, and in October 2010, the guardian ad litem filed another application to remove the children from parental custody. DHS initiated a CINA petition regarding S.K. In December 2010, the parents stipulated to S.K.'s adjudication as a CINA.⁵ Following an evidentiary hearing, the court denied the guardian ad litem's request for removal, finding the parents had met the minimal standards previously imposed by the court. The court reviewed the request again in January 2011 and determined the children should remain in parental custody. The court advised the parents, however, that the evidence established that they continued to meet only minimal expectations and even that was done inconsistently. Further, the parents were put on notice of the "ongoing risk that, if they did not consistently maintain their home in a safe and sanitary condition, the court might grant a request to remove the children from parental custody to assure their safety."

Despite this warning, the conditions of the home fluctuated between "marginally safe and sanitary to unsafe and unsanitary." The mother was

⁵ S.K. was adjudicated pursuant to Iowa Code section 232.2(6)(b) (parent has physically abused or neglected the child, or is imminently likely to abuse or neglect the child) and section 232.2(6)(g) (parent fails to exercise minimal degree of care in supplying the child with adequate food, clothing, or shelter, and refuses other means available to provide such essentials). S.K. continued to live with the family, but family-centered services were initiated for him.

unemployed, the older two children were in school, and the younger two children were in protective daycare, yet the mother did not clean the home. In May or June 2011, it became apparent the home was consistently in a filthy and unacceptable condition. Abundant evidence in the record indicates the home had infestations of cockroaches⁶ and fleas; overflowing garbage containers; stained beds without sheets; piles of dirty clothes, trash, and pop cans on the floor and tables; old food on the floor, furniture, and tables; an odor of cat urine and feces⁷; dishes piled in the sink and on countertops; burnt food caked on the stove; choking hazards within reach of the children; and debris on the floor. The home was not cleaned, despite specific directions from the in-home caseworker. The mother had poor personal hygiene, and she was sometimes only partially clothed or wearing dirty clothes. The children's bedding, blankets, and clothes were often not clean. The parents smoked in the bedroom, despite warnings not to because of Al.K.'s asthma condition. Al.K. had been hospitalized four times since October 2010, including two times "pretty much back to back" between March and May 2011. The other children had upper respiratory illnesses.

There were also concerns the children were not adequately supervised. The mother allowed S.K., one year old, to place sharp objects into his mouth. Al.K., three years old, performed his nebulizer treatments incorrectly. The mother also relied on the older two children to supervise the younger children while she slept on the couch.

⁶ Cockroaches were seen on areas the children played, including the walls, in the bathroom, in the children's room, and underneath a mattress on a child's bed.

⁷ The family had recently acquired two kittens.

Further, the parents had been held in contempt of court because they allowed the children to be around the paternal grandparents, as well as an uncle, in violation of no-contact orders previously entered by the court.

In June 2011, the State sought modification of the dispositional order the court had entered in June 2010. The guardian ad litem agreed with the DHS recommendation to modify the dispositional order. Following a hearing in August 2011, the court entered its order granting modification after finding the parents were incapable of addressing the cleanliness of their home and providing for the children's health and safety. The parents now appeal.

II. Scope and Standard of Review.

Our review of CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 14 (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). 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). 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.*

III. Discussion.

The parents contend the State failed to prove a substantial and material change of circumstances occurred following entry of the June 2010 dispositional order. They argue any alleged inadequacies in their parenting have never

resulted in harm to the children; allege the children are at minimal risk in their care; and claim no change of circumstances could occur because “the condition of the family home has more or less stayed the same” since the outset of the CINA proceedings.

We disagree. The evidence is clear the condition of the home has deteriorated since May or June 2011. Prior to that time, as the juvenile court observed, the parents had been able to improve the cleanliness of the home to at least a minimally acceptable level. However, the parents’ lackadaisical attitudes and unresponsiveness as of late had resulted in the children consistently living in an environment that jeopardizes their health and safety. Indeed, caseworkers testified that “this time” was different because the parents had done nothing to improve the state of the home after receiving specific directions to do so and a warning a modification would be filed. We also find the evidence indicates the children have suffered harm from the current living conditions of the home. As caseworkers testified, “the condition of the home is what results in the illnesses in the children most often,” including consistent upper respiratory problems in all the children and aggravation of Al.K.’s asthma leading to his recent hospitalizations.

In its modification order, the court found:

Given the history here, considering the current condition of the home, the significant amount of services provided to the family with no sustained change, the level of supervision provided to the children by the parents, the Court does not believe that safe, adequate shelter will be provided to the children if they continue to reside with their parents. The Court further believes that this lack of adequate shelter subjects the children to harm to their health, safety, and welfare.

We conclude the parents' disregard of the directives set forth in the dispositional order, the continued and worsened health and safety conditions of the family home, and the effect these issues have had on the children are substantial changes of circumstances that warrant modification of the prior court order. See *R.F.*, 471 N.W.2d at 824.

The parents also argue modification is not in the children's best interests. Upon our review, we conclude it is in the children's best interests to be removed from the parents' care. We acknowledge the strong bond the children have with the parents. However, continued exposure to the risks caused by the unsafe and unsanitary condition of the home and inadequate supervision is contrary to the children's welfare and causes them to remain at risk of adjudicatory harm. As the juvenile court observed, "After five years of intensive, continuous in home services and continuous monitoring to address unsafe and unsanitary conditions, the result has been intermittent periods of marginally livable conditions." The evidence also reflects that the sanitary conditions improved prior to court hearings until the threats of removal were no longer given serious consideration by the parents. The parents' past performance is indicative that they are unable or unwilling to reduce the risk of harm to their children. See *C.D.*, 509 N.W.2d at 511-12. The children's long-range and immediate interests are best served by placement outside the family home. *Id.*

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.