

IN THE COURT OF APPEALS OF IOWA

No. 2-1039 / 12-1532
Filed November 29, 2012

**IN THE INTEREST OF T.O. and D.O.,
Minor Children,**

**L.O., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, Cheryl Truam,
District Associate Judge.

T.O.'s father challenges a juvenile court's modification of a permanency
order. **AFFIRMED.**

Christine Frederick of Zamora, Taylor, Woods & Frederick, Davenport, for
appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County
Attorney, for appellee.

Dana Coppell, Davenport, for mother.

Angela Fritz Reyes, Davenport, attorney and guardian ad litem for minor
child.

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

TABOR, J.

A father challenges a juvenile court order directing the Department of Human Services to update its case plan to provide services for his troubled fourteen-year-old son T.O. The father contends he is addressing T.O.'s misbehavior and DHS intervention is not required. The questions on appeal are (1) whether the State proved a material and substantial change in circumstances justifying modification of a 2007 permanency order placing T.O. in the custody of his father and finding services were no longer needed, and (2) whether the modification is in T.O.'s best interest.

We find evidence in the record indicating T.O.'s best interests would be served by enabling the DHS to reinitiate services under the family's case plan. Accordingly, we affirm the modification order.

I. Background Facts and Proceedings

The juvenile court adjudicated T.O. and his younger brother D.O. as children in need of assistance (CINA) in 2005. Both parents engaged in domestic violence, and their mother had issues with substance abuse and drug-related crimes. During the pendency of the CINA case, the father was more faithful in participating in DHS services. In its May 10, 2006, permanency order, the juvenile court placed T.O. and D.O. in their father's custody.

On February 26, 2007, the court found the family no longer needed DHS services, but ordered the DHS and the guardian ad litem (GAL) to complete a report updating the children's status before the case's annual review.

In its 2008 and 2009 review orders, the court found the children were doing well in their father's care. Their mother had only sporadic contact with them because of substance abuse and incarceration for drug offenses.

T.O.'s problems came to the fore in 2011. In March 2011, he shoplifted merchandise from a department store in Davenport. The matter was resolved with counseling rather than a delinquency adjudication. In its May 4, 2011 review order, the court noted that T.O. "gets good grades in school when he applies himself" but added he can be "morose and moody." The court attributed T.O.'s emotional issues to recent contact with his mother who was in prison.

Because of T.O.'s increasing outbursts and troubling behaviors, a school guidance counselor referred the boy and his father to Leaders of Tomorrow. Since April 26, 2011, the agency has provided services to help T.O. improve his social skills, conflict resolution, anger management, and community involvement. The father encouraged T.O.'s participation with Leaders of Tomorrow, but T.O. remained resistant to the intervention. T.O. had engaged in four sessions with staff of the agency as of the time of the modification hearing.

In February 2012, the court's review order reported the mother's renewed communication presented difficulties for T.O. and D.O. Since that time, Leaders of Tomorrow referred T.O. for counseling with Dr. Benton Johnson. Since June 2012, Dr. Johnson has seen T.O. for two evaluations and three therapy sessions.

T.O. is enrolled in the Alternative to Expulsion Program at an intermediate school, but attended class a total of seven days from March 30, 2012 to the end of the school year. In June 2012, Davenport police officers arrested him for

interference with official acts and riot; T.O. allegedly exited a squad car and jumped onto an officer's back. Authorities used a taser to subdue him. The next month, T.O. was accused of committing assault.

On July 19, 2012, the State filed an application for “modification of the prior dispositional order.” The application alleged the father was “not cooperating with services to address [T.O.’s] behaviors”—alleging the teenager was “currently running the streets with [the father] having little knowledge as to where [T.O.] is most days and nights.” The juvenile court scheduled the modification hearing for July 31, 2012.

On the day of the hearing, Davenport police charged T.O. with assault for shooting a person in the back with a BB gun and fleeing the scene. At the hearing, GAL Angela Reyes recommended T.O. and D.O. remain with their father, but that additional services be put in place.

On August 10, 2012 the juvenile court issued its modification order, finding: “While the services from Leaders of Tomorrow may be a help to the family, [T.O.]’s behaviors have recently escalated and it is clear that more help from the Department of Human Services is needed for this family.” The court ordered the DHS to update the case plan and ordered T.O. and D.O. to remain in their father’s custody subject to DHS supervision. The father appeals.

II. Scope and Standard of Review

We engage in a de novo review of a juvenile court's decision to modify a permanency order. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). We examine the entire record and adjudicate anew rights on the issues properly presented. *In*

re A.S.T., 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

[O]ur responsibility in a modification of a permanency order is to look solely at the best interests of the children for whom the permanency order was previously entered. Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs.

Id.

III. Analysis

The father contends his family does not need additional services because he already reached out to Leaders of Tomorrow, recently joined the YMCA, and sought counseling for T.O. He asserts he has addressed every safety risk that prompted the modification order and argues no substantial change in circumstances existed to justify the juvenile court's update of the case plan.

The State contends the juvenile court's directive to the DHS to become more involved in the case was a modest change, and was warranted by T.O.'s out-of-control conduct.¹ The State points to opinions from T.O.'s juvenile court officer, the DHS case manager, the GAL, and the director of Leaders of Tomorrow, all of whom believe the family requires services beyond those lined up by the father.

¹ The State requested the instant appeal be dismissed as interlocutory because of the preliminary nature of the juvenile court order. Our supreme court denied the State's request on October 18, 2012.

The relevant statute is Iowa Code section 232.104(7)(a) (2011).² The party seeking the modification must show a substantial change in material circumstances, and that these new conditions require a change that will comport with the best interest of the child. *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) (applying standard to modification of permanency orders under section 232.104); *see also In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005) (using same standard to address section 232.103, which relates to modification of a dispositional order).

In this case, the substantial change in material circumstances is T.O.'s escalating misbehavior, manifested in his poor school attendance, physical abuse of others, and stealing. Despite the father's efforts at corrective measures, T.O. continued to act out, resulting in entanglements with law enforcement. Similar developments in family dynamics have triggered modification orders in prior cases. *See, e.g., D.S.*, 563 N.W.2d at 15 (modifying permanency order based on a parent attending assertiveness training classes and showing progress in parenting skills); *In re S.V.G.*, 496 N.W.2d 262, 264 (Iowa Ct. App. 1992) (modifying permanency order based on parent's failure to

² Both the juvenile court in its order and the father on appeal cite section 232.102, which addresses transfer of legal custody of the child and child placement. But as the State points out, section 232.104 controls this appeal. It reads, in part:

Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

Iowa Code § 232.104(7)(a).

respond to services and noncommittal attitude toward child). We conclude the State established a substantial change in material circumstances requiring modification of the permanency order, and that the modification would serve T.O.'s best interest.

The trial record supports the juvenile court's modification. James Crawford, the director of Leaders of Tomorrow, testified the family's present efforts were not effective in curtailing T.O.'s delinquency and additional intervention would be in the teenager's best interest. The DHS worker, T.O.'s juvenile court officer, and the GAL echoed Crawford's sentiments. Updating the family's case plan with the goal of supplementing the services already available to T.O. and his father is a minimal intrusion, but a necessary step toward improving the teenager's future prospects. At the close of the hearing, the GAL provided these insightful comments:

We do need a plan, a plan of action. We need to save him before he commits a crime and is charged with robbery or something. He is almost 14 and I believe he is accused of five assaults in the past month and spent a weekend in juvenile detention.

We agree with the juvenile court's decision to modify the permanency order to allow DHS to channel resources to T.O. and his father so the family can right the ship before the teenager commits even more serious criminal acts.

AFFIRMED.