

IN THE COURT OF APPEALS OF IOWA

No. 2-353 / 12-0407
Filed May 9, 2012

**IN THE INTEREST OF T.L.B.,
Minor Child,**

**G.K., Mother,
Appellant.**

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A mother appeals from a district court's order denying her motions to
increase visitation and to modify a dispositional order. **AFFIRMED.**

David A. Dawson, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant
County Attorney, for appellee State.

Michael P. Murphy of Murphy Law Firm, Le Mars, for appellee father.

John C. Polifka of Juvenile Law Center, attorney and guardian ad litem for
minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

A mother appeals a district court's order that provided custody of T.B. remain with DHS and stated visitation between T.B. and her parents "shall be at the discretion of and under conditions set by DHS in consultation with the CASA and her attorney and with the understanding that progress toward reunification be facilitated."

T.B. was born to Gayle and Leon in July 2011. On October 5, 2011, T.B. was adjudicated a child in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2011). On October 25, 2011, Gayle signed a voluntary foster care placement agreement and T.B. was placed with Gayle's mother and stepfather in Storm Lake, Iowa. On December 6, 2011, visitation between Gayle, Leon, and T.B. was decreased from once per week to every other week.

On December 15, 2011, Gayle filed a motion to increase visitation. On January 5, 2012, Gayle filed a motion to modify the district court's November 10, 2011 dispositional order to return custody of T.B. to Gayle, stating modification was supported by her and Leon obtaining and maintaining steady employment and a stable, suitable home for T.B. since mid-November 2011. A CINA review hearing and a hearing on the pending motions was held on January 27, 2012. The district court denied both motions in its order dated February 15, 2012.

Our review in juvenile court proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). "We review both the facts and the law, and we adjudicate rights anew. Although we give weight to the juvenile court's factual findings, we are not bound by them." *Id.* (internal citation omitted). Our primary concern is the best interests of the child. *Id.*

Gayle asserts the district court erred in denying both her motion to increase visitation and her motion to modify the November 11 dispositional order, and in finding that DHS was making reasonable efforts toward reunification. In its February 15 order, the district court concluded:

As stated by the court at the hearing, reunification is the goal in these proceedings, and while it has been a bumpy road, that goal is beginning to appear attainable in the foreseeable future. That, however, requires cooperation and communication between service providers, family members, and support groups and a period of consistent stability. While that period has apparently begun, it is not of sufficient duration yet to cause this court to conclude that it is in T.B.'s best interest to return to her parents now. It does, however, militate very strongly in favor of a unified effort to move towards that goal and that effort should proceed with reasonable pace. Such constitutes the most reasonable efforts to attain/maintain reunification.

The district court's order recognized the progress Gayle has made, provided for visitation at DHS discretion, and concluded that DHS was making reasonable efforts in working toward the ultimate goal of reunification. We agree with the district court because although Gayle has made progress in this case and demonstrated stability from mid-November 2011 up to the time of the January 27, 2012 hearing, she did not prove a material and substantial change of circumstances that would warrant the relief she requests. *In re C.D.*, 509 N.W.2d 509, 511 (Iowa Ct. App. 1993) (stating that a party seeking modification of the custody and visitation provisions of a dispositional order "must show the circumstances have so materially and substantially changed that the best interest of the child" requires modification). Our primary concern is always the best interests of the child. *K.N.*, 625 N.W.2d at 733. Like the district court, we view progress with caution, yet remain hopeful that the services provided, coupled

with Gayle's continued efforts, will make reunification a viable goal.¹ We therefore affirm.

AFFIRMED.

¹ We note the district court set the next review hearing for April 20, 2012, which predates the filing of this opinion.