

**IN THE COURT OF APPEALS OF IOWA**

No. 3-281 / 13-0217

Filed April 10, 2013

**IN THE INTEREST OF A.S. AND M.S.,  
Minor Children,**

**S.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

A mother appeals from a child in need of assistance dispositional  
modification order. **AFFIRMED.**

Joel Walker of Law Office of Joel Walker, Davenport, for appellant Mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County  
Attorney, for appellee State.

Patrick Kelly, Bettendorf, for appellee father.

Eric Puryear of Puryear Law, P.C., Davenport, for appellee father.

Jennifer Olsen of Olsen Law Office, Davenport, attorney and guardian ad  
litem for minor children.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.**

A mother appeals from the child in need of assistance (CINA) dispositional modification order removing her two children, A.S. and M.S. She contends the juvenile court erred in modifying its prior dispositional order that placed the children in her care about nine months following their initial removal from her care. We affirm, finding modification of the dispositional order was proper.

**I. Facts and Proceedings.**

A.S. (born 2009) and M.S. (born 2010) were adjudicated CINA in November 2011, after the children were left unattended and naked for over twenty minutes in a hotel room. The mother had also left them unattended once before and had a prior founded report for leaving another child unattended. The children were placed with grandparents in September 2011.

The children were returned to their mother's custody in July 2012. In December 2012, M.S. showed bruising to his thighs and wrists. A child protective worker spoke with both children separately and both reported their mother struck M.S. The children were again removed according to a safety plan and placed with relatives. A dispositional review hearing was held December 31, 2012. During this hearing, some testimony was given regarding the injuries to M.S., but a hearing for modification of placement pursuant to a motion to modify filed by the Department of Human Services (DHS) that day was set for the following month to more fully address the issue. The court continued custody with the mother but placed the children with relatives, pursuant to the safety plan. The court cautioned the mother about her anger management issues, especially in light of two recent, unrelated arrests for assault and criminal mischief.

DHS stated in the motion to modify that it did not have enough time to assess the situation fully and notify the parties regarding a request for change of placement prior to the scheduled permanency review hearing. The motion also included information regarding the examination of M.S. by a child protective worker and a physician. The physician confirmed the injuries were the result of being struck with an object and observed additional injuries that pre-dated the wrist and leg bruises.

A hearing on the motion to modify the disposition occurred January 25th, 2013. The court heard from the children's case manager, the children's protective worker, their daycare provider, and the children's mother. The case manager and protective worker both recommended transfer of custody to relatives. The protective worker related what M.S. had told her—that his mother "whooped" him. The worker also testified M.S. had said the same thing to his examining physician and a police officer. She also reported the examining physician thought the markings were consistent with being hit with a belt. The childcare worker testified she had not seen markings while taking care of M.S.—however she last took care of M.S. two to three days before the injuries were observed and reported. The mother testified she did not hit M.S. and that M.S. could have been referring to someone else as his mother. The court concluded the children were not safe in the mother's care, that placing the children in the temporary custody of relatives was the least restrictive option, and in the children's best interests. The mother appeals from this order.

## II. Analysis.

We review all CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). “Before a dispositional order in a juvenile proceeding can be modified, the party seeking modification must first prove a substantial change in material circumstances, and that under the new conditions, a change is in the best interests of the child or children.” *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005). Before December, DHS was not aware of physical abuse to the children by their mother. The mother argues such a change in circumstances did not occur; that the court removed the child for one single mark whose origin could not be determined. We give weight to the trial court’s credibility determination. Iowa R. App. P. 6.904(3)(g). Ultimately, we must decide whether “a change is in the best interests of the . . . children.” *D.G.*, 704 N.W.2d at 458.

We agree with the juvenile court that a change in custody is in the best interests of the children at this time. Far from the mother’s assertion that removal is based on a single mark of unknown origin, the examination of M.S. and reports to several adults by the children show there is an ongoing safety concern warranting this second removal of the children from the mother.

**AFFIRMED.**