

**IN THE COURT OF APPEALS OF IOWA**

No. 3-728 / 13-0714  
Filed July 24, 2013

**IN THE INTEREST OF H.H. AND N.H.,  
Minor Children,**

**N.H., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Dallas County, Virginia Cobb,  
District Associate Judge.

A mother appeals an order suspending visitation with her two children.

**REVERSED AND REMANDED.**

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des  
Moines, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Wayne Reisetter, County Attorney, and Sean Weiser, Assistant County  
Attorney, for appellee State.

Steven Clarke, West Des Moines, for appellee father.

Victoria Meade, West Des Moines, attorney and guardian ad litem for  
minor children.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

**VAITHESWARAN, J.**

A mother appeals an order suspending visitation with her two children, born in 2007 and 2009.

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

This proceeding began in July 2012, with the discovery that the mother was using drugs. The children were removed from her care and placed in several homes before being adjudicated in need of assistance in December 2012. At that point, the department of human services transferred the children to a pre-adoptive foster home. Within two weeks of the transfer, the foster mother scheduled the older child for an appointment with a therapist. After five visits over a five-week period, the therapist advised the department by letter that “contact [with the parents] is not to [the older child’s] benefit.” She stated, “I would like to see his parents complete mental health evaluations prior to any further contact with [the older child].”

In light of the therapist’s recommendation, the children’s guardian ad litem asked the district court to suspend the parents’ one-hour-a-week supervised visits with the children. Around the same time, the mother advised the court that the department was “not complying with what was agreed.” The district court temporarily suspended the visits and scheduled an evidentiary hearing on the guardian ad litem’s request and the mother’s assertion. Following the hearing, the court confirmed that the suspension of visits would continue. The court stated there was “a material change in circumstances of the well-being of the children that warrants a modification of dispositional order, specifically, that visitation with the parents be suspended.” The court additionally stated it was “in

the best interest of the children to do so,” reasoning that “[t]he children’s negative behaviors and stressors caused by the chaos in the visits with the parents are detrimental to the children’s mental health at this time.” This appeal followed.

## ***II. Analysis***

Iowa Code section 232.103 (2013), governing the modification of dispositional orders, authorizes a court to modify a dispositional order “for good cause shown.” Iowa Code § 232.103(1), (5). We have stated “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). The mother asserts that the State did not prove either prong. On our de novo review, we agree.

The district court, in part, relied on the testimony of the older child’s therapist. The therapist’s services were requested by the foster mother, not for the purpose of evaluating the child’s reactions to visits, but to give the child a chance to discuss his feelings in the wake of the recent upheavals in his life. The foster mother explained:

[W]hen I got the children [the department case manager] and I have talked about their prior removals from other homes, multiple before they got to us, I believe we are the fourth. . . . With the moving the children multiple times, behaviors, and just the overall need for therapy in general, I believe is a very good source for them to be able to talk about their feelings, talk through the issues that they are living, and so between talking with [case manager], . . . we all had agreed that it was the next step and a good step.”

She testified there was not a specific incident that prompted her to schedule therapy and she “[a]bsolutely” intended to move forward on this front in any event.

Like the foster mother, the therapist did not direct her therapeutic sessions to the child’s visits with his parents. She stated, “[W]e have had lots of things to talk about, questioning a child about visitation has not come up yet.” She said she had never seen the younger child in a therapeutic setting and emphasized her limited involvement with the older child, stating:

I think that we are about beginning, we have had just a few sessions to date, and our last several sessions have been cancelled related to the weather. I do feel like we are forming a therapeutic relationship.

Despite the therapist’s insistence that they were still at a nascent stage of the relationship, she comfortably diagnosed the child with post-traumatic stress disorder after only the second visit. The diagnosis was not based on behaviors she saw but on a stress index completed by the foster mother and department case manager. Indeed, all the information about the child’s extreme behaviors came from the foster mother, case manager, and visitation supervisor. The therapist did not contact the mother to get her side of the story and spoke only “briefly” to the child about his parents. With exceptional candor, the therapist admitted to not including the parents in therapy sessions “[b]ased on [her] collaboration with [the department case manager] and [the service provider].” She also essentially admitted that her recommendation for parental mental health evaluations as a precondition to reinstatement of visits came at the behest of the department case manager.

Notably, no public funding was available to pay for those mental health evaluations. When asked about the possibility of scheduling a free evaluation, the department case manager said, “The one place that I did check . . . has a long waiting list for pro bono work.” Apparently oblivious to the catch-22 this posed for the parents, the department case manager seconded the therapist’s opinion, which she had been instrumental in formulating.

This brings us to the testimony of the service provider who furnished documentation of two supervised visits and who acknowledged that she was only recently assigned to the case and could not speak to the content of visits in 2012. The service provider initially stated that the parents missed approximately fifty percent of their visits with the children. On cross-examination she admitted that the parents only canceled one of the seven scheduled visits with her and they did so because of weather conditions. She also acknowledged that the mother’s “overall interaction with the children [was] good,” the mother had never compromised the safety of the children during visits, and she never witnessed temper tantrums from the kids. Rather than recommending a cessation of visits, she recommended “that visitation continue to be fully supervised.”

We are left with the foster mother’s testimony that the children exhibited “severe behavior.” By her own admission, some of that behavior, such as the older child’s sleeplessness and nightmares, “happened fairly solid for a good three weeks” after the child was placed in their home and improved as he settled into her home. The foster mother also stated the older child cried and wet or soiled himself “to this day,” lending credence to the mother’s assertion that those behaviors were not directly tied to the discontinued visits. As for the younger

child's behaviors, the foster mother acknowledged the child had highs and lows throughout the time she was placed in their home.

Based on this record, we conclude the State did not establish good cause for a complete cessation of the already limited visits the department authorized. At best, the State established that the mother had a strained relationship with the department case manager and service provider and the three- and five-year-old children exhibited disquieting behaviors. There was no showing that the mother's interactions with the children had deteriorated from a benchmark level and no showing of a link between the children's behaviors and the visits by the requisite clear and convincing evidence.

We turn to the question of whether a complete cessation of visits was in the children's best interests. The case manager and service provider's acknowledgment that the children were attached to their mother answers this question. There was also evidence that, following one visit, the children wanted to go home with her. Given the mother's regular attendance and the children's evident excitement at seeing her, we conclude indefinite suspension of the visits was not in their best interests.

We reverse the district court's modification of the dispositional order and remand for reinstatement of supervised visits.

**REVERSED AND REMANDED.**