

IN THE COURT OF APPEALS OF IOWA

No. 6-593 / 06-0904
Filed August 9, 2006

**IN THE INTEREST OF S.P. and J.P.,
Minor Children,**

H.P., Mother,
Appellant,

M.P., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs,
Judge.

A mother and father appeal from a juvenile court order that denied their
application to modify a prior dispositional order. **AFFIRMED.**

Natalie Cronk, Iowa City, for appellant mother.

Jacob Koller of Johnston & Nathanson, P.L.C., Cedar Rapids, for
appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, J. Patrick White, County Attorney, and Kristen Parks and Deborah
Minot, Assistant County Attorneys, for appellee State.

Maurine Braddock of Honohan, Eppley, Braddock & Brenneman, Iowa
City, for intervenor.

Shannon Walsh, Iowa City, for minor children.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Heather and Matthew, the parents of two children, appeal from a juvenile court order that denied their application to modify a dispositional order. They contend the record establishes a material and substantial change in circumstances sufficient to warrant returning their children to their care. They also contend the court erred in determining reasonable efforts were made toward reunification and in denying increased visitation. We affirm.

I. Background Facts & Proceedings

Heather and Matthew are the parents of Skylar, born May 1999, and Jade, born November 2002. The children were removed from the parents' home on July 18, 2005, after the Iowa City Police Department arrested Matthew at his home on an outstanding warrant. When the police arrived at the home, there were six children present. A naked woman was lying on the living room floor with children running around her. The police found methamphetamine, syringes, and a closed circuit television system in the home that allowed the parents to see who was at the door as well as monitor the children upstairs. The parents were watching hardcore pornography and arguing loudly and profanely about anal sex.

The juvenile court adjudicated Skylar and Jade as children in need of assistance (CINA) on August 25, 2005, pursuant to Iowa Code sections 232.2(6)(n)¹ and 232.2(6)(o)² (2005) due to concerns regarding substance abuse

¹ Iowa Code section 232.2(6)(n) describes a child in need of assistance as a child "[w]hose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care."

² Iowa Code section 232.2(6)(o) describes a child in need of assistance as a child "[i]n whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian."

and inadequate supervision. The parents stipulated to the adjudication. Heather and Matthew both admitted to being high when caring for their children. Jade tested positive for methamphetamine after the children were removed from their parents' home. The parents had also allowed an inappropriate caretaker to supervise their children. Following adjudication, the children were ordered to remain in the custody of the Iowa Department of Human Services (DHS) in their present foster care placement, and DHS began offering reunification services to the family.

The children's foster parents noticed that Skylar repeatedly acted out in sexual ways. The children were removed from their first foster home and placed in treatment level foster care due to Skylar's aggression toward the foster family's pets and her sexual acting out with her sister.

Dr. Elizabeth Doak, an experienced pediatric clinical psychologist, evaluated Skylar. She diagnosed the child with attention deficit hyperactivity disorder, adjustment disorder with anxiety, and disturbance of conduct. Dr. Doak also found Skylar was "a seriously traumatized child who shows symptoms consistent with sexual abuse." She concluded it was "clear from her play, behavior and symptoms that she has experienced both family violence and some type of sexual abuse." Skylar told Dr. Doak her parents told her not to tell anyone about the abuse. When Dr. Doak confronted the parents with evidence of Skylar's sexualized behavior, both parents denied she had been sexually abused or exposed to adult sexual behavior. Dr. Doak recommended that Skylar remain in treatment level foster care.

In March 2006 Matthew filed a motion to modify custody and a request for reasonable efforts, asking the court to return Skylar and Jade to his custody or increase visitation. Heather joined in the motion. Following a contested hearing, the juvenile court denied the parents' motion in an order filed May 12, 2006. Matthew and Heather have appealed.

II. Scope and Standards of Review

Our scope of review in juvenile proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the juvenile court's findings of fact, but we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998). In order to modify the placement or custody of Heather and Matthew's children, there must be a showing of a material and substantial change in circumstances. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991).

III. Discussion

The parents raise several issues on appeal. They contend the record establishes a material and substantial change in circumstances sufficient to warrant returning their children to them. They also argue the court erred in determining reasonable efforts were made toward reunification and in denying increased visitation. For the reasons that follow, we find no merit in any of the parents' appellate claims.

A. Modification

Since their children were removed from their care, the parents have made considerable progress in addressing the concerns of substance abuse and domestic violence that brought their children to the attention of DHS. However,

as the juvenile court aptly observed, this case involves much more than issues relating to parental problems and marital discord.

At the modification hearing, Dr. Doak testified it was clear Skylar had been traumatized. She opined it was important for Skylar “to have a very stable, nurturing, firm environment where her psychological problems are paid attention to and treated appropriately.” Dr. Doak recommended that Skylar remain in treatment level foster care because if she returned to a traumatic environment, she could be at risk for mental health problems. Although both parents denied the possibility that Skylar had been sexually abused, Heather testified there was a possibility Skylar’s sexual behavior resulted from her exposure to pornography and her parents’ sex acts. She admitted it was possible Skylar witnessed her parents engaged in sexual intercourse.

After carefully considering the evidence, the juvenile court concluded there was clear and convincing evidence that Skylar was sexually abused in some manner, that she was told not to tell by her parents, and that the bad touch occurred in her parents’ home. The court also concluded that neither parent had properly released Skylar from their instructions to keep certain matters secret. The court then declined to order the children returned to their parents’ care.

Upon our de novo review of the record, we determine it is in the children’s best interests to continue their placement in treatment level foster care. This placement will ensure the children’s safety while maximizing Skylar’s chances for recovery. We affirm the juvenile court’s ruling on this issue.

B. Reasonable Efforts toward Reunification

Heather and Matthew next claim the court erred in determining reasonable efforts were made toward reunification because DHS refused their prior requests for increased visitation. The juvenile court listed the numerous services offered to the family and found those services reasonable under the circumstances. Upon our de novo review of the record, we find no reason to disagree with this decision.

C. Visitation

The parents also contend the court erred by failing to order increased visitation following the modification hearing. As we have mentioned, Dr. Doak recommended continued out-of-home placement in a treatment level foster home. The juvenile court found this recommendation persuasive and declined the invitation to establish a timeline for increased visitation and the return of the children. Because we find no reason to disagree with the juvenile court's decision, we reject this assignment of error.

IV. Conclusion

We conclude ample evidence supports the juvenile court's refusal to return these children to the home of their parents. We also conclude the juvenile court acted reasonably in finding DHS engaged in reasonable unification efforts. Finally, we conclude the juvenile court acted reasonably in refusing to order unsupervised visits following the modification hearing. Accordingly, we affirm the juvenile court's decision.

AFFIRMED.