

IN THE COURT OF APPEALS OF IOWA

No. 6-863 / 06-1473
Filed November 16, 2006

**IN THE INTEREST OF Z.T.,
Minor Child,**

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

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

S.J. appeals the juvenile court's disposition review order placing her child,
Z.T., with his father, K.T. **AFFIRMED.**

Cathleen Siebrecht of Siebrecht & Siebrecht Law Firm, Des Moines, for
appellant mother.

Dawn Bowman, Pleasantville, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant
County Attorney, for appellee State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor child.

Considered by Huitink, P.J., and Vogel and Miller, JJ.

HUITINK, P.J.

S.J. appeals the juvenile court's disposition review order placing her child, Z.T., with his father, K.T. We affirm.

I. Background Facts & Proceedings.

S.J. and K.T. are the parents of five-year-old Z.T. Pursuant to the terms of their dissolution decree, S.J. and K.T. were granted joint custody of Z.T. S.J. was awarded physical care. Z.T. was removed from S.J.'s custody on August 11, 2005, and placed with K.T. On October 11, 2005, Z.T. was adjudicated a child in need of assistance on several grounds, including: Iowa Code section 232.2(6)(b) (parent has physically abused or neglected child (or is imminently likely to do so)), 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and 232.2(6)(n) (parent's mental capacity (or condition, or drug or alcohol abuse) results in child not receiving adequate care). The adjudicatory order continued Z.T.'s placement with K.T.

The court's November 29, 2005 dispositional order granted concurrent jurisdiction, allowing the parties to pursue modification of their dissolution decree in district court. On April 7, 2005, the district court modified the custodial provisions of the parties' dissolution decree by placing Z.T. in K.T.'s primary care.

On June 20, 2006, the juvenile court modified the November 29, 2005 dispositional order by transferring Z.T.'s custody to S.J. The court's stated reasons for modification were pending domestic abuse allegations against K.T. and S.J.'s progress in the resolution of mental health and substance abuse issues.

Z.T.'s custody was again placed in issue by K.T.'s August 9, 2006 application for modification of the June 20, 2006 dispositional review order. Following hearing on the merits of K.T.'s application, the juvenile court modified the June 20, 2006 order, placing Z.T. in K.T.'s temporary legal custody. The court's order includes the following findings of fact:

Given the history and procedure of this case, it is in [Z.T.'s] best interest to return to his father's custody immediately. Although [S.J.] has made significant progress since this case was first filed, [K.T.] is better able to meet [Z.T.'s] long term needs for stability, security, and safety. [K.T.] is the primary physical custodian and [Z.T.] can be returned to his custody without risk of further adjudicatory harm, so long as he continues to comply with the Case Plan. [Z.T.] needs permanency. [K.T.] has adequately demonstrated that he is ready, willing, and able to comply with the plan that will enable [Z.T.] to continue in his care without disruption.

On appeal, S.J. raises the following issues:

- I. The juvenile court erred in removing the child from the custody of the mother where there was not a finding that the child could not be protected from some further adjudicatory harm if he were not removed.
- II. The juvenile court erred in transferring placement of the child from the mother to the father, where the record is devoid of evidence of conditions since the court's last dispositional order which has so materially and substantially changed that the best interests of the child made a change in custody or placement expedient.

II. Standard of Review.

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Merits.

Iowa Code section 232.103(1) (2005) provides for the modification of a dispositional order prior to its expiration. A party seeking a modification of a prior dispositional order must show the circumstances have so materially and substantially changed that a modification is in the best interests of the child. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). If clear and convincing evidence shows a substantial change in circumstances since a dispositional order, the child's best interests may require a change in placement. *See id.*; *In re C.D.*, 509 N.W.2d 509, 511 (Iowa Ct. App. 1993).

Here, K.T.'s application for modification was based on Z.T.'s continued exposure to domestic violence and alcohol abuse while in S.J.'s care. There is abundant evidence of both. Moreover, there is evidence indicating that Z.T. has engaged in sexually inappropriate behavior while in S.J.'s care. Contrary to S.J.'s claims, the record includes clear and convincing evidence supporting the juvenile court's earlier stated findings of fact, and we adopt them as our own. For the same reasons, we reject S.J.'s claims that the State has failed to prove Z.T. will be subjected to further adjudicatory harm if left in her custody. We accordingly affirm the juvenile court's dispositional review order.

AFFIRMED.