

IN THE COURT OF APPEALS OF IOWA

No. 7-173 / 06-2052

Filed April 11, 2007

IN THE INTEREST OF C.A.H.,
Minor Child,

C.A.H., Minor Child,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

A minor child appeals from the district court's order denying modification of disposition or dismissal of her adjudication as a child in need of assistance.

AFFIRMED.

Sheila O'Laughlin, Cedar Falls, guardian ad litem/attorney for appellant minor child.

Andrew Abbott, Waterloo, attorney for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney and Kathleen Hahn, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

C.H., born January 1990, appeals from the district court's order denying her motions to modify her placement to a less-restrictive setting or alternatively to dismiss the child in need of assistance (CINA) petition. Because we agree with the district court that C.H. has failed to meet her burden of proof for either modification or dismissal, we affirm.

C.H. was first adjudicated CINA in May 2004 pursuant to Iowa Code section 232.6(f) (2003) (parent fails to provide needed treatment for a serious mental illness) following an involuntary mental health commitment under chapter 229. At age fourteen, C.H. had run away from home several times, had a sexual relationship with an adult male with a previous rape conviction, and she had attempted suicide by overdose of medication. She was initially placed at the Iowa Juvenile Home in Toledo for evaluation, where the consulting psychiatrist diagnosed her with a conduct disorder, polysubstance abuse, and mood disorder with antisocial traits. Following a dispositional order, C.H. was transferred to the care of the Iowa Department of Human Service (DHS) for group foster care placement, but with mittimus withheld, allowing her to remain at home and participate in outpatient treatment. Mittimus issued for group care and C.H. was placed in Forest Ridge from August 2004 through late June 2005. It appears that C.H. successfully completed services while at Forest Ridge and was granted a trial home placement in June. Her success was short-lived as C.H. ran away from home in September 2005, was later found in Arkansas, and continued run-away incidents through mid-November from detention, shelter, and group foster care. Disposition was modified in December to placement in a psychiatric

medical unit for children in Dubuque, from which she fled in mid-January 2006. C.H. was again placed in the Iowa Juvenile Home in Toledo, and a review hearing was scheduled for October 2006.

In April 2006, C.H. began participation in the Skow Cottage program at Toledo. She progressed quickly, being employed both on and off-campus, attending school sufficiently to achieve senior status, and engaging in community-welfare volunteer work after a tornado hit Iowa City. No substance abuse treatment was provided as administrators did not consider C.H.'s possible issues a high priority given the limited space available in the substance abuse program at Bryant Cottage. A staffing recommendation followed in late July 2006 that C.H.'s progress warranted discharge to treatment-level family foster care by September 1 and eventual return home to her mother. Although special steps were taken by C.H.'s counselor to ensure DHS's prompt action to find a foster home, some miscommunications occurred that led to the DHS caseworker believing C.H.'s discharge date would not be until late December 2006. Once clarified by C.H.'s attorney, DHS began searching for family foster care but after contacting approximately seventeen foster parents, was unable to find a suitable home.

C.H. filed a motion to modify her placement at Toledo or dismiss the CINA petition in late August 2006. However, C.H.'s attitude declined with the passage of her unsuccessful discharge date, leading to a planned runaway from Toledo¹ with another resident and her attempt to obtain the prescription drug Xanax. Although she was unable to get the drug, C.H. expressed that drug use was a

¹ C.H. did not follow through with the runaway attempt.

real concern for her. The Toledo staff grew increasingly concerned over her declining, unstable emotional state and potential to return to drug use as her method of coping with reality. The staff recommended removal to Bryant Cottage where C.H. would receive substance abuse treatment through a six- to twelve-month program. The modification hearing was held in late November 2006, and by ruling filed in early December, the district court determined that DHS made reasonable efforts to provide C.H. services to obtain a family foster home, that no significant change in circumstances had been shown, and placement at Toledo was the least-restrictive alternative and in C.H.'s best interests. C.H. appeals.²

Scope of Review. We conduct a de novo review of CINA proceedings. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. Iowa R. App. P. 6.14(g). Our overriding concern in such cases is always the best interests of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

Modification of Placement.³ C.H. argues that a significant change in circumstances in late August 2006, namely her progress to a discharge level, required modification of placement by the court to family foster care. 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. *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005). C.H.'s initial adjudication was

² An appeal by C.H.'s mother was dismissed by order of the Supreme Court for failing to conform to appellate rules of procedure.

³ We agree with the district court that reasonable services were offered to C.H.

based upon her mental and behavioral issues, which included problem solving, coping skills, impulsivity, and her inability to follow rules or conform to structure. C.H.'s mother could not control her, and her behavior had become self-destructive. Even though C.H. had made significant progress up until the time she filed for modification, her chosen manner to cope with the failed family foster care placement demonstrates that her pattern of decision making and need for a more-structured environment remains unchanged. We conclude the district court properly ruled that no substantial change in material circumstances was proven and that continued placement in Bryant Cottage at Toledo is in C.H.'s best interests. We affirm on this issue.

Dismissal of CINA Petition. C.H. lastly contends that because her mother is willing to provide treatment and substance abuse/mental health treatment is available in less-restrictive community options, the CINA petition should be dismissed. The district court may terminate a dispositional order and release the child if the court finds that any of the following circumstances exist:

- a. The purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment.
- b. The purposes of the order cannot reasonably be accomplished.
- c. The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.
- d. The purposes of the order have been sufficiently accomplished and the continuation of supervision, care, or treatment is unjustified or unwarranted.

Iowa Code § 232.103(4) (2005).

A CINA dispositional order may be terminated prior to its expiration only if the purposes of the dispositional order have been accomplished and the child is no longer in need of supervision, care, or treatment. *K.N.*, 625 N.W.2d at 734.

For many of the same reasons discussed above, we agree with the district court that termination of the dispositional order and dismissal of the CINA petition is not recommended or in C.H.'s best interests at this time. C.H. has failed to demonstrate that she has developed the necessary skills to handle disappointment even in a highly-structured care setting, let alone when placed with her mother at home. Although the purposes of her placement have not been entirely successful, there remain other options to bolster C.H.'s success, namely the treatment program available at the Bryant Cottage. She remains in need of care, supervision, and treatment, and there is no indication that further treatment would not benefit C.H. or lead to accomplishment of her permanency goals. Therefore, termination of the dispositional order or dismissal of the petition is not warranted at this time, and we affirm the district court.

AFFIRMED.