

IN THE COURT OF APPEALS OF IOWA

No. 7-799 / 07-1473
Filed November 15, 2007

**IN THE INTEREST OF K.C. and C.G.,
Minor Children,**

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

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals the juvenile court order modifying custody of her
children. **AFFIRMED.**

Janice B. Binder, Mount Vernon, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant
County Attorney, for appellee State.

Jessica Wiebrand, Cedar Rapids, for minor children.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Summer is the mother of Kayla, born in 1999, and Corbin, born in 1997. Summer abused alcohol and marijuana for many years.

In 2005, the children were removed from her care and placed with a relative. They were returned to her care in the fall of 2006, with a district court admonition that a relapse might result in another removal. Less than four months later, Summer relapsed.

The State again sought to have the children temporarily removed. The district court granted an ex parte order and scheduled a “[m]odification hearing” for a date twenty days later. Summer objected to this procedure, asserting the temporary removal hearing should have been held within ten days of the removal order. See Iowa Code §§ 232.78, 232.95(1) (2007). The court ordered a consolidated hearing on the objection and the State’s request to modify prior dispositional orders. That hearing was begun within twenty days of the removal order.

Following the hearing, the court rejected Summer’s assertion that a hearing on the post-adjudication temporary removal order had to be held within ten days of the order. The court also modified prior dispositional orders that authorized placement of the children with Summer.

On appeal, Summer contends (1) she “was denied fundamental due process by having her children removed from her custody ex parte without a subsequent removal hearing,” (2) she “had a constitutionally protected liberty interest in her children that did not vanish simply because she was involved in the juvenile court system,” and (3) “the juvenile court err[ed] in ordering a

modification on less than clear and convincing evidence that circumstances had so materially and substantially changed that placement in foster care was in the children's best interests."

With respect to the first two issues, the State preliminarily argues that error was not preserved. We disagree. Summer's counsel consistently maintained that the removal did not comply with "fundamental due process." Although the district court did not mention due process in its written order, the judge informed the parties that

due process is met when there's an opportunity to be heard for hearing, [t]hat the appropriate standard to be applied in this case is the Modification of Dispositional Orders standard, [and] [t]hat the 10-day requirement for an ex parte removal pre-adjudication does not apply.

As the first and second issues were raised and decided, error was preserved.

Turning to the merits, the district court correctly noted that the Iowa Supreme Court has addressed and decided the constitutional and statutory issues raised by Summer. *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994); *In re R.F.*, 471 N.W.2d 821, 823 (Iowa 1991). On the question of what process is due parents in termination and child-in-need-of assistance proceedings, the court stated,

As for the procedure required, "[o]ur statutory scheme for protecting the rights of natural parents in termination proceedings was carefully crafted as a legislative response to federal court decisions which held our prior parental termination statutes unconstitutional." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987), *cert. denied*, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988). The CINA procedures are part of this statutory scheme.

In re A.M.H., 516 N.W.2d at 871. On the question of what the statutory scheme authorizes, the court stated:

We believe it is implicit in the power of the juvenile court in monitoring its prior CINA orders to temporarily, even summarily, remove a child pending a hearing on the modification. In other words, we do not believe that Iowa Code section 232.78 provides the only authorization for summary removal when a child is already under the jurisdiction of the juvenile court under a CINA order.

In re R.F., 471 N.W.2d at 823; see also Iowa Code § 232.103. The district court appropriately applied this precedent.

On the third issue, our review is de novo. Iowa R. App. P. 6.4. We find clear and convincing evidence to support the district court's finding of a change of circumstances warranting modification of prior dispositional orders. See *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997) ("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."). Summer admitted to smoking marijuana or consuming alcohol on several occasions in 2007 and she could not explain a number of other "misoccurred" alcohol tests. Although she commendably recognized the need to enter a relapse prevention program, this recognition came after several months of drug and alcohol usage. For these reasons, we affirm the order.

AFFIRMED.