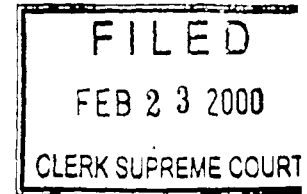


IN THE COURT OF APPEALS OF IOWA

No. 0-002 /98-1362

Filed February 23, 2000



**IN THE INTEREST OF K.U. and R.U.,
Minor Children,**

**K.W., Guardian,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
Associate Juvenile Judge.

The guardian of two minor children appeals a district court modification order ruling it was no longer necessary for the Department of Human Services to continue offering him reunification services due to his repeated sexual abuse of the children. Guardian contends: (1) the State and the children's guardian ad litem failed to meet their burden of showing a substantial change in circumstances justifying a change in the dispositional order; and (2) the State failed to offer reasonable services. **AFFIRMED.**

Robert S. Gallagher of Gosma & Gallagher, P.L.C., Davenport, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Rob Cusack, Assistant County Attorney Intern, for
appellee State.

~~Janice~~ Hanrahan Roemer, Davenport, guardian ad litem for minor children.

Heard by Sackett, C.J. and Vogel and Hecht, J.J.

SACKETT, C.J.

~~Rex~~ and Kendra born in 1980 and 1990 were found in 1991 to be children in need of assistance. In 1992 the juvenile court named the children's great uncle Appellant K.W. as their guardian. A permanency order was entered and custody of the children was transferred to him. In February of 1998 following Kendra's report that she was sexually abused by K.W.'s son and his friends, the district court on the petition of the Department of Human Services terminated K.W.'s guardianship. K.W. contends there was insufficient proof to terminate his guardianship and he was not offered reasonable services. We affirm.

K.W. admits that Kendra may have been sexually abused. He advances however that there was insufficient evidence to modify the dispositional order.

Our review of an action arising from CINA proceedings is de novo. Iowa R. App. P. 4. We give weight to the factual findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. Iowa R. App. P. 14(f)(7).

Modification of a dispositional order is addressed in Iowa Code section 232.103 (1997). A party seeking a modification of the custody provisions of a prior dispositional order must show the circumstances have so materially and substantially changed that the child's interest requires the change. See *In re J.F.*, 386 N.W.2d 149, 152 (Iowa App. 1986); *In re Leehey*, 317 N.W.2d 513, 516 (Iowa App. 1982). This standard also applies to modifications of other provisions of the dispositional order. *In re C.D.*, 509 N.W.2d 509, 511 (Iowa App. 1993).

The sexual abuse of Kendra while in K.W.'s custodial care is a substantial change of circumstance. There is clear and convincing evidence that Kendra

was sexually abused in K.W.'s home and that sexual abuse led to the removal of the children from his home. The record does not reflect that Kendra will be protected from abuse if she remains in K.W.'s home. We affirm on this issue.

K.W. contends that the state failed to use reasonable efforts to preserve the family. Assuming without deciding that the state was required to employ reasonable efforts, we find it did. K.W.'s contention centers on his allegations that the Department of Human Service should have done more to help control the situation in his home. Efforts were made to set up a program to allow K.W. to monitor the actions of the children in the household to prevent the abuse from happening again. K.W. made no additional requests for services. Challenges to services should be made when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App.1994).

Finding the necessary burden was met to support the modification and that reasonable services were offered K.W., we affirm the juvenile court.

AFFIRMED.