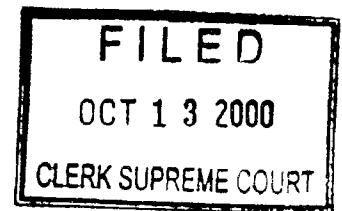


IN THE COURT OF APPEALS OF IOWA

No. 0-525 / 99-1109
Filed October 13, 2000

IN THE INTEREST OF J.D., L.D., and T.D., Minor Children,
L.M., Mother,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris, Associate Juvenile Judge.

The mother of three children appeals a juvenile court order denying her motion to modify the terms of the permanency order. **AFFIRMED.**

Mary E. Kennedy, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Steven Halbach, Assistant County Attorney, for appellee State.

Sara A. Kersenbrock of Kersenbrock Law Office, Waterloo, guardian ad litem for minor children.

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

VOGEL, P.J.

The natural mother, Laura, appeals the denial of her motion to modify a permanency order, which placed her three minor children in residential treatment facilities. We find the placements are in the best interests of the children and Laura has failed to carry her burden of showing a material and substantial change in circumstance. We affirm.

Background facts. Laura is the natural mother of the three minor children. She appeals a permanency order only as to the two older children; Joshua, born in December 1981, and Lonnie, born in June 1983. The children were removed from Laura's custody in July 1995. The children were in multiple placements prior to the trial court's permanency order of April 27, 1998. Joshua was placed at the Woodward State Hospital School. Joshua is a low functioning, seventeen-year-old male. He has been diagnosed with multiple problems, including a severe conduct disorder with adolescent on-set, adjustment disorder with mixed disturbance of conduct and emotion, and depressed moods. He is also a sexual offender.

Lonnie was placed in the Mental Health Institute at Independence. He was transferred to Four Oaks McIntyre facility in June 1998 and subsequently moved to foster care, where he remained at the time of the modification hearing. Lonnie is a fifteen-year-old male with a borderline level of functioning. He also has multiple diagnoses, including oppositional defiant disorder, attention deficit hyperactive disorder, suicidal ideation and attempts, auditory hallucinations, low self-esteem and aggressive behavior.

Laura sought to modify the permanency order, by seeking custody of Joshua and Lonnie. The court denied her motion and she now appeals.

Scope of review. Our review of an action arising from CINA proceedings is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but we are not bound by these findings. Iowa R. App. P. 14(f)(7); see *In re D.S.*, 563 N.W.2d 12, 14 (Iowa App. 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 best interest of the child requires such a change in custody. *In re C.D.*, 509 N.W.2d 509, 511 (Iowa App. 1993). The court must find, by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa App. 1993). The children's best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.G.*, 444 N.W.2d 518, 520 (Iowa App. 1989) (citation omitted). The parent's past performance provides insight into this determination. *C.D.*, 509 N.W.2d at 511.

Motion for modification. Laura contends the circumstances in this case have changed substantially since the permanency order was entered, warranting a change of custody back to her care. At the time of the permanency hearing, Laura was involved in an abusive relationship, which adversely affected the children. She now argues she is no longer in that relationship and, therefore, the potential harm to the children has been alleviated. Laura further asserts Joshua

~~and Lonnie have made~~ substantial improvements in meeting their goals and should, ~~therefore,~~ be reunited with her as a family unit.

~~Joshua,~~ according to the goals of his case permanency plan, has had no further episodes of sexual abuse since his placement. Additionally, he has learned to respect personal and social boundaries and has participated in social group activities. Lonnie has been stable in his placement and has reduced his negative behaviors.

The State alleges continued placement is in the best interests of these boys. The trial court, in denying Laura's motion, heard testimony from several people regarding the boys' progress. It placed great weight on the testimony of Kathleen Urich, Joshua's psychologist, and Phylliss Armstrong, program manager over Joshua's unit of the APPLE Program. Both of these service providers, having worked closely with Joshua during his placement at Woodward, testified that transferring Joshua to a mainstream high school would not be in his best interests. They felt a change at this point would interfere with his treatment program, disrupt the continuity provided by his current placement and eliminate the ability of quick intervention as problems arise. We defer to the credibility findings of the trial court and agree with those findings. See Iowa R. App. P. 14(f)(7).

Although both Joshua and Lonnie have made improvements in their behavior, they have not yet reached the goals that would allow a return to Laura's care. The trial court found, and we agree, Laura has remained dissatisfied with the placement of her children and has not encouraged or

supported their participation in the various programs necessary to their positive growth and development. She has continued to deny the existence of many of the problems these children face and, thus, has remained unable to help them progress. The boys continue to need the structure and treatment programs available to them in their current placements. A change in custody would be disruptive to their treatment and progress.

We find Laura has not carried her burden to demonstrate a material and substantial change in circumstance, which would support a modification in the children's current placement. The juvenile court was correct in denying the petition for modification. Accordingly, we affirm.

AFFIRMED.