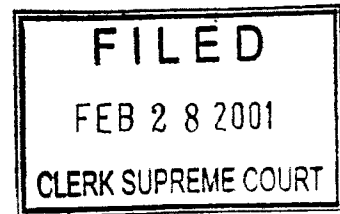


IN THE COURT OF APPEALS OF IOWA

No. 1-049 / 00-1215
Filed February 28, 2001



**IN THE INTEREST OF D.P.,
Minor Child,**

**D.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee,
Judge.

Mother appeals from temporary removal and modified dispositional orders
placing her child, Dillon, with his father, K.P. **AFFIRMED.**

Marsha J. Arnold, Davenport, for appellant.

Paul E. Pfeffer of Paul E. Pfeffer Law Office, Clinton, for appellee-father.

David Pillers, Clinton, for minor child.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Jayme Kirsch, Assistant County Attorney, for appellee-
State.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.***I. Background Facts and Proceedings.***

D.P. and K.P. are the parents of eleven-year-old Dillon. Dillon has lived with D.P. since 1991 when D.P. and K.P. divorced.

Dillon was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(f) (1999) (child in need of treatment parents unable to provide). The undisputed circumstances justifying adjudication included Dillon's severe misbehavior at home and school. An April 19, 2000, dispositional order left Dillon in D.P.'s custody subject to counseling, medication, and visitation with K.P.

On April 20, 2000, the State obtained a temporary order removing Dillon from D.P.'s custody. The removal order was issued based on Dillon's description of a physical altercation with D.P. and his fear of returning to her home. Dillon's temporary placement with K.P. was continued after a temporary removal hearing on May 5, 2000.

D.P.'s post-removal-hearing motions for new trial and to amend the court's findings of fact were consolidated for hearing with the State's subsequently filed motion to modify the April 19 dispositional order. Following the hearing on these motions the court entered a modification order placing Dillon with K.P. In that order the court stated:

The Court concluded in the Order of May 5, 2000, that the evidentiary standard pursuant to Section 232.95 had been met. The Code requires substantial evidence to believe that removal is necessary to avoid imminent risk to the child's life or health. The Court concluded in the order of May 5 that the definition of health included emotional health. The Court was on May 5, 2000,

extremely reluctant to return Dillon . . . to a home where he was fearful and afraid. The testimony presented at the hearing on May 3, 2000, and the additional testimony received on June 27 supports the Court's conclusion that substantial evidence exists to believe that removal was necessary to avoid imminent risk to the child's life or health. The Court had concluded that health includes emotional health and there was imminent risk to the emotional health of the minor child, Dillon . . . , if he remained in the home of his mother, [D.P.] The Order entered on May 8, 2000, placed Dillon . . . with his father, [K.P.] After taking additional testimony on June 27, the Court's conclusion and result remain the same.

On appeal D.P. challenges the sufficiency of the evidence supporting the juvenile court's temporary removal and modified dispositional orders. D.P. also contends the State failed to make reasonable efforts to reunite or maintain Dillon in her home.

II. Standard 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 of these findings. Iowa R. App. P. 14(f)(7).

III. Temporary Removal and Modification Orders.

D.P.'s challenge to the temporary removal order is premised on the insufficiency of the evidence supporting the trial court's finding that Dillon was at imminent risk if he remained in D.P.'s custody. We need not resolve this issue, however, because subsequent modification proceedings render D.P.'s complaints moot. See *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994) ("We cannot go back in time and restore custody based on alleged errors in the initial removal order.").

We also find no merit in D.P.'s argument to the extent it implicates the evidentiary support for the juvenile court's modified dispositional order. Modification of dispositional orders is provided for in Iowa Code section 232.103. Modification of a dispositional order requires proof that circumstances have so materially and substantially changed that a modification is in the child's best interest. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997).

We, like the juvenile court, find the State has met its burden. Dillon's circumstances changed dramatically from the time the dispositional order was entered until removal. Expert assessments by social workers made following his altercation with D.P. confirmed the resulting emotional trauma and its lingering effects. The record also indicates that the difficulty of Dillon's situation was compounded by D.P.'s hostility towards corrective services and conviction that Dillon's situation was entirely of his own making. Under these circumstances, the juvenile court properly determined that the prospects for addressing the circumstances necessitating adjudication were greater if Dillon was placed with K.P. We therefore affirm on this issue.

IV. Reasonable Efforts.

The State is required to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(7); *see also In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). This includes both efforts to prevent and eliminate the need for removal. Iowa Code § 232.102(10)(a); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The focus is on services to improve parenting. *C.B.*, 611 N.W.2d at 493.

Families of Northeast Iowa has provided services to this family since 1995 with no appreciable improvement in Dillon's situation. D.P. was resistant to these services, and when questioned regarding improvements she would make at home, D.P. indicated that she believed it was Dillon who must change and that she saw no benefit in any additional services being offered to her. We accordingly find that reasonable efforts were made to prevent and eliminate the need for removal. See *In re T.T.*, 541 N.W.2d 552, 558 (Iowa Ct. App. 1995) (reasonable efforts were made where offered services were not taken advantage of by parent).

The juvenile court's modified dispositional order is affirmed in its entirety.

AFFIRMED.