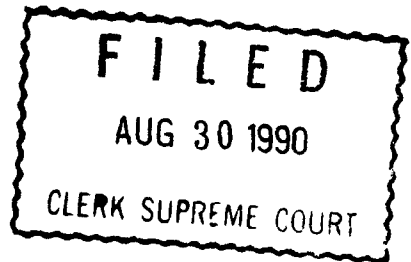


IN THE COURT OF APPEALS OF IOWA

No. 0-479 / 90-0575



IN THE INTEREST OF D.D., A Minor Child,
J.D., Father,
Appellant.

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Appeal from the Iowa District Court for Marshall
County, Sandra J. Holien, Judge.

The father has appealed from the modified dispositional
order. He contends the evidence was insufficient to
warrant the child's removal from his home. **AFFIRMED.**

Gene L. Beach, of Grimes, Buck, Schoell & Beach,
Marshalltown, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen,
Deputy Attorney General; Mary K. Wickman, Assistant
Attorney General, for appellee-State.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ.

DONIELSON, J.

D.D. was born in March, 1977. He lived with his parents until the latter part of 1986, when he was adjudicated child in need of assistance (CINA) and placed in the home of an aunt and uncle. When D.D. was first placed in this home, age 11, he had trouble with soiling his pants and bedwetting. The enuresis and encopresis abated somewhat during his placement. D.D. remained with his aunt and uncle until June 3, 1989. D.D.'s mother was killed in an auto accident at the time the parents were seeking D.D.'s return.

On May 24, 1989, the juvenile court entered an order returning D.D. to his father's house, subject to Department of Human Services (DHS) supervision and various conditions: (1) D.D. was to be allowed to visit his relatives every other weekend, (2) J.D., father, was to enroll in and attend parenting classes, (3) J.D. was to secure counseling for D.D. and family counseling for the two of them, and (4) J.D. was to cooperate with the Department of Human Services (DHS), including in-home visits.

On July 19, 1989, J.D. was found in contempt of court for violating the conditions of temporary placement. However, mittimus was withheld and J.D. was given additional time to comply with the facilitation of D.D.'s visits with his aunt and uncle. On October 30, 1989, the court ordered J.D. to serve fifteen days on the prior

contempt finding based upon the father's continued failure to comply with the court's conditions, i.e. no family visits were held in August, 1989, and only one visit occurred in September, J.D. refused to cooperate with DHS in-home visits and refused to sign release forms, and no counseling had yet been arranged.

Also on October 30, 1989, the court granted the State's application and ordered D.D. placed in a residential facility for a 30-day evaluation. The evaluation was completed on December 13, 1989, and D.D. was allowed to return to his father's home pending further hearing on the placement matter. The evaluation was completed without input from J.D. because he refused to participate or sign releases of information. No counseling was arranged by J.D. until February 28, 1990 (although J.D. had contacted Bob Hoskinson of the Des Moines Child and Adolescence Guidance Center, Inc. on August 17, 1989, for possible evaluation and treatment of D.D.).

A review hearing was held on March 21, 1990. The guardian ad litem motion to modify a dispositional order and the father's motion for change of venue were considered. The court heard testimony from Richard Coleman, D.D.'s case worker from DHS; Sarah French, author of the evaluation report; Dr. Martha Leatherman, psychologist on the evaluation team; Robert Hoskinson, counselor of D.D. and J.D.; and J.D. The facility personnel described D.D. as having a great deal of

emotional and behavioral immaturity while at the facility. D.D., now 12, had not consistently achieved control of his bladder and bowel functioning, tended to neglect his general appearance and hygiene, had inadequate social knowledge, experienced denial concerning the conflicts within his family, and was experiencing difficulty in school even after placement in a self-contained class for his dyslexia. All the mental health professionals and social workers were in agreement that D.D. needed intensive counseling and treatment for his educational, emotional and social problems.

The juvenile court described the issue before it as a narrow one -- whether the treatment program for D.D. should occur in the more intensive setting of residential treatment or on an outpatient basis with D.D. placed in a foster home or continued in his father's home. In an order filed April 4, 1990, the court directed the child be removed from the father's home and placed in a residential facility.

The father appeals. He contends the evidence was insufficient to warrant the child's removal from his home.

The principles controlling our review are well established, and are not in dispute. Appellate review of CINA proceedings is de novo; accordingly, we review the facts and the law and adjudicate rights anew where the issues have been properly preserved and presented. In Interest of D.L., 401 N.W.2d 201, 202 (Iowa App. 1986).

Our paramount concern is the welfare and best interest of the child. Id.

Citing Iowa Code section 232.102(4), J.D. argues the removal from the parental home must be justified by clear and convincing evidence. Yet J.D. correctly notes the review hearing concerned the guardian ad litem's motion to modify the dispositional order. Modification or vacation of a dispositional order is governed by section 232.103, not the section mentioned by J.D.; the clear and convincing standard is not applicable to a modification of disposition under section 232.103. Iowa Code section 232.103(5) allows the juvenile court to modify or vacate a prior dispositional order for "good cause" shown. Iowa Code § 232.103(5) (1989). In In Interest of J.F., 386 N.W.2d 149 (Iowa App. 1986), and In Interest of Leehey, 317 N.W.2d 513 (Iowa App. 1982), we addressed the issue whether there was sufficient ground for modification of a prior CINA dispositional order pursuant to Iowa Code section 232.103. We established the party seeking modification or vacation of a prior dispositional order from the juvenile court must show by a preponderance of the evidence that the conditions since the court decree have so materially and substantially changed that the best interests of the child requires a change in custody or placement. J.F., 386 N.W.2d at 152; Leehey, 317 N.W.2d at 516.

The State asserts that the material and substantial change of circumstances is the recognition, as a result of

the court ordered evaluation, D.D. needs intensive counseling and treatment for his educational, emotional and social problems. The State further maintains the preference of all involved would be for outpatient treatment, but the success of the therapy would require dedication and cooperation by the caretaker. Given J.D.'s history of unwillingness to cooperate, the State contends the best interests of D.D. require a change in custody or placement. Upon our de novo review of the record, we agree.

Ms. French testified that her evaluation of D.D. indicated that he had several needs including: a secure environment in which D.D. could develop age appropriate skills, a neutral setting where he can remain loyal to all members of his family, and consistent communication between D.D.'s caregiver and education providers. Dr. Leatherman testified regarding emotional and behavioral immaturity she believed D.D. needed help in dealing with and, in her opinion, could be corrected with intensive therapy and counseling. However, she testified that D.D.'s environment must change in order to support him in his efforts. She further emphasized that D.D.'s caregiver must be involved in the treatment program if it was to be effective. Mr. Hoskinson testified he read the evaluation report and concurred in the conclusion the father must be involved in the social and educational support of his son. He also testified J.D. must start parenting D.D., rather than the

reverse. We conclude this recent recognition of the need for intensive therapy constitutes a material and substantial change in circumstances.

Additionally, we believe the history of the father's refusal to cooperate is an important factor in this case. Evidence of the parent's past performance may be indicative of the quality of future care he is capable of providing. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). J.D. has continuously refused to allow in-home visitation by DHS. He has refused to sign release forms allowing DHS to access information in order to follow D.D.'s progress. J.D. has been unaware of several days of missed school by D.D. He did not make arrangements for D.D.'s counseling for almost one year after being ordered to do so. He has not facilitated visitation between D.D. and his other family members even though all concerned believed it very important to D.D.'s well-being. Where all social and mental health workers emphasize the necessity of cooperation by D.D.'s caretaker in the treatment program, J.D.'s past history of noncooperation convinces this court the best interests of D.D. require a change in placement or custody.

In conclusion, we believe the record contains sufficient evidence of conditions since the juvenile court's dispositional order placing D.D. in his father's home which have so materially and substantially changed that the best interests of the child require a change in

placement. We do not disturb the juvenile ¹⁵³ court's
modification of disposition order which temporarily places
D.D. in a residential treatment facility.

AFFIRMED.