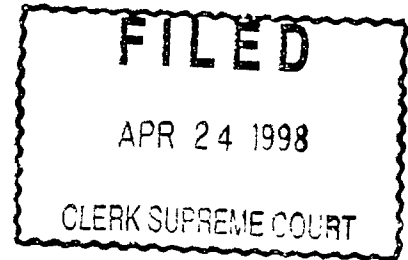


IN THE COURT OF APPEALS OF IOWA

No. 8-096 / 97-899

IN THE INTEREST OF W.S.,
A Minor Child,

R.S., Father of W.S.,
Appellant.



Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge

A father appeals the juvenile court's denial of his request for visitation with his
daughter. **AFFIRMED.**

Richard E. H. Phelps II, Mingo, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and John C. Heinicke, County Attorney, for appellee State.

Ryan A. Genest of Borseth & Genest, Pleasant Hill, for minor children.

Pamela A. Vandel, Des Moines, for J.W., mother.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Roger S. appeals the juvenile court's denial of his request to have visitation with his daughter, Wendy. He asserts the court should have allowed him to relitigate allegations of sexual abuse determined earlier by the court and that the court should have allowed him to receive sexual abuse counseling without admitting the abuse.

Julie W. and Roger are the parents of Wendy, born in 1991. Julie is also the mother of Johnna, born in 1983, and Amanda, born in 1985. In August 1996, the State brought a CINA petition concerning all three children because Johnna stated Roger sexually abused her. On August 12, 1996, the court ordered the children temporarily removed from the home. It also found Roger committed the abuse on multiple occasions and physically abused Amanda. The court ordered Roger to have no contact with any of the children.

On October 15, 1996, the court adjudicated the children in need of assistance, incorporating the findings of the August 12 removal order. The November 8, 1996, dispositional order confirmed the no contact order and required Roger to complete an assessment and any recommended treatment as a sexual perpetrator at his own expense. Roger did not attend any of the hearings nor appeal any of the orders.

Following Roger's application for court-appointed counsel on January 2, 1997, his attorney filed a motion for visitation. At the hearing on visitation, Roger requested he be allowed to relitigate the issue of whether he sexually abused Johnna.

The court denied the motion and confirmed the no contact order. The court also found Roger had notice and an opportunity to be heard at the earlier hearings but failed to appear.

We review CINA cases *de novo*. *In re B.B.*, 500 N.W.2d 9, 12 (Iowa 1993). We give weight to the findings of the juvenile court, but are not bound by them. Iowa R. App. P. 14(f)(7). The modification of a dispositional order is provided for in Iowa Code section 232.103. The party seeking modification 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 re C.D.*, 509 N.W.2d 509, 511 (Iowa App. 1993).

Our *de novo* review of the record reveals Roger claimed “significant progress in obtaining employment and a residence” as the basis for modifying the dispositional order and obtaining visitation. The CINA dispositional ruling directed that Roger, “will complete an assessment and any recommended treatment through a sexual perpetrators counselor or program at his own expense.” Roger testified he went to a sexual abuse counselor one time, but as he did not admit to the abuse, the counselor could not help him. We find Roger’s argument he could not comply with the dispositional order because, as a prerequisite to treatment, the counselor required Roger to admit to the abuse, to be without merit. The court did not restrict Roger to seeking treatment with a particular sexual abuse counselor. He was free to seek help

from the counselor of his choice. With such limited effort on Roger's part, we cannot find compliance with the dispositional order such that would support a modification of the visitation restrictions.

Roger also sought to relitigate the issue of whether he actually committed the abuse, stating he did not attend prior hearings for fear of criminal prosecution. His excuse is without merit. Furthermore, as he did not appeal the earlier adjudication, he cannot attempt to relitigate the findings in a subsequent dispositional review hearing. *See In re Marriage of Guyer*, 522 N.W.2d 818, 821 (Iowa 1994) (principles of *res judicata* preclude court from relitigating issue or claim that has previously been decided).

Roger has offered no material and substantial change in circumstances warranting a change in the visitation provisions of the dispositional order nor any evidence such a change would be in Wendy's best interests. *See In re C.D.*, 509 N.W.2d at 511. We therefore affirm the decision of the juvenile court denying Roger's motion for visitation.

AFFIRMED.