FILED
DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF	)	Filed December 30, 1981
SOROYA GRACE HAMILTON, A child,	)	1-391 3-66689
Appellant.	)	

Appeal from Linn Juvenile Court - Brent G. Harstad, Associate Judge.

Soroya Grace Hamilton appeals from the juvenile court dispositional order, and the juvenile court's later refusal to modify that order. Soroya contends that: (1) the dispositional order placing her in foster care was more drastic than warranted by the severity of her offense; (2) the juvenile court should have granted her mother's motion to modify the dispositional order by returning Soroya to her mother's home; and (3) the dispositional order was defective for want of statutorily required specificity in several respects. AFFIRMED AS MODIFIED AND REMANDED.

Thomas R. Pence of Hines, Pence, Day & Powers, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General of Iowa, and Brent Hege, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DANIELSON, J.

Soroya Grace Hamilton appeals from the juvenile court dispositional order, and the juvenile court's later refusal to modify that order. Soroya contends that: (1) the dispositional order placing her in foster care was more drastic than warranted by the severity of her offense; (2) the juvenile court should have granted her mother's motion to modify the dispositional order by returning Soroya to her mother's home; and (3) the dispositional order was defective for want to statutorily required specificity in several respects. We affirm as modified.

I.

After a hearing before the juvenile court, Soroya Hamilton was found to have committed a delinquent act by stealing $2.33 worth of groceries. Soroya admitted committing the theft at the hearing. The judge ordered the child's probation officer to prepare a social history report. A dispositional hearing was held pursuant to section 232.50, The Code. Custody of Soroya was transferred to the Department of Social Services for foster care placement, and Soroya was put on probation.

Soroya's mother filed a motion for termination, modification, or vacation and substitution of the dispositional order. A hearing was held and the judge ordered that the prior dispositional order remain in effect. Soroya then filed notice of appeal.

II.

Soroya argues that the trial court abused its discretion by transferring custody to the Department of Social Services for foster care placement under section 232.52 for the theft of groceries worth $2.33. We disagree. It is true that section 232.1, The Code, states that each child under the juvenile court's jurisdiction shall receive care, guidance, and control, preferably in his or her own home. However, the court is to make the disposition which will best serve the child's welfare and the best interest of the state. Section 232.1, The Code. In making this determination, the court is not limited to the four factors enunciated in section 232.52. Section 232.48 specifically requires the judge to consider a predisposition report before the dispositional hearing. Therefore, the judge in this case did not err in considering the family situation in making his disposition. The fact that the amount taken was only $2.33 is beside the point. The judge also correctly considered the total record before the court including the seriousness of the delinquent act, Soroya's culpability, age, prior record, and the effect of the existing home environment upon efforts to achieve rehabilitation of the

delinquent child. The evidence in this case showed the preference for in home treatment as contemplated by section 232.1 was overcome.

It is in Soroya's best interest to be placed in foster care. Soroya was having trouble at school due to both her disruptive behavior and lack of regular attendance. Her mother did not encourage Soroya's school attendance. Although not adjudicated delinquent prior to this hearing, Soroya has been referred to the Department of Social Services on several prior occasions for criminal behavior. Her mother has been uncooperative with the probation officer appointed to work with Soroya and her family by not keeping appointments and failing to provide social history information.

Soroya's mother has received extensive assistance from outside agencies and from her own family members. Family members are concerned about the children's welfare, and have been for years. Soroya's uncles are in agreement with her placement outside the home. They feel unable to take Soroya into their homes because when a sister of Soroya's previously came to live with them, Soroya's mother continually interfered and attempted to undermine any help they gave. Since Soroya's mother continued to be uncooperative with the court and the probation officer assigned to the case, the probation officer felt probation in an in-home setting would not be successful. Under these circumstances, we agree with the juvenile court that ordering Soroya to be removed from her mother's home will best serve her welfare. Such an order was not more drastic than warranted.

We also agree with the juvenile court's refusal to grant the motion for termination, modification, or vacation and substitution, with one exception. The appellant is correct in asserting that the juvenile court did not comply with section 232.52(2)(D)(3) in that its order did not specify the type of residence. We therefore uphold the order, but modify it so that the type of residence is specified to be a foster family home. Section 232.133, The Code 1981; In The Interest of Kelly, 236 N.W.2d 50, 53 (Iowa 1975). We remand Soroya to the jurisdiction of the juvenile court for disposition consistent with this opinion. Section 232.135, The Code 1981.

AFFIRMED AS MODIFIED AND REMANDED.