IN THE COURT OF APPEALS OF IOWA

No. 1-575 / 00-2078
Filed September 12, 2001

IN THE INTEREST OF T.A.J., A.J., S.J., and J.J.,
Minor Children,

M.H., Mother,
Appellant,

P.F., Father of J.J.,
Appellant.

FILED
SEP 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, District Associate Judge.

The parents of four minor children appeal a juvenile court order granting the State's petition for modification of prior CINA dispositional orders by awarding the children's custody to the Department of Human Services for placement in foster care. **AFFIRMED.**

Karla M. Wolff, Cedar Rapids, for appellant mother.

David E. Mullin and Anne M. Laverty of Mullin & Laverty, P.L.C., Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Lance Heeren, Assistant County Attorney, for appellee-State.

Barbara Connolly, Cedar Rapids, guardian ad litem for minor children A.J., S.J., and J.J.

Crystal L. Usher of Nazette, Marner, Good, Wendt & Knoll, Cedar Rapids, guardian ad litem for minor child T.A.J.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

The parents of four minor children appeal a juvenile court order granting the State's petition for modification of prior CINA dispositional orders by awarding the children's custody to the Department of Human Services (DHS) for placement in foster care. The parents argue the juvenile court erred in: (1) concluding there was a material and substantial change in circumstances justifying a transfer of the children's custody to DHS; and (2) in concluding reasonable services had been offered prior to the modification order. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS

Michelle is the mother of four minor children, Tricinda born July 15, 1984, Ashley born August 8, 1986, Shauna born January 22, 1989, and John born September 25, 1990. Michelle is currently married to Roy. Patrick, the father of John, joins Michelle in this appeal.

Michelle and her family have had a long association with the Iowa Department of Human Services (DHS). On September 11, 1997, Michelle's home was placarded by the City of Cedar Rapids as being unfit for human habitation. In addition to the unsanitary conditions found in the home, marijuana and drug paraphernalia were also seized at this time. When this came to the attention of the DHS, a Child in Need of Assistance (CINA) petition was filed regarding all four of Michelle's children. Initially, Michelle cooperated with services provided to assist her in cleaning up her placarded home. However, when Michelle stopped cooperating with family preservation services and threatened to leave the state with her children, the DHS again stepped in. On October 9, 1997 the children were removed from Michelle's custody by an

emergency removal order. Subsequently, all four children were adjudicated CINA in an order dated October 24, 1997.

In addition to the deplorable conditions of Michelle's home and evidence of drug use, the court also expressed concern regarding Michelle's choice of friends. It came to the court's attention that Michelle frequently permitted her children to be exposed to known sex offenders and drug dealers. The October 1997 removal order found that Michelle had been responsible for seven prior founded allegations of denial of critical care and denial of appropriate supervision, with the first of these reports filed in 1985.

In an attempt to regain custody of her children, Michelle again displayed an increased willingness to cooperate with social services. In a court report dated July 1, 1999, DHS worker Katy James concluded that Michelle had made substantial progress in each of the goal areas identified in the case permanency plan by keeping her house sanitary and in good repair, dropping clean UA's, and reducing the traffic flow in her home. The DHS relied upon Michelle's assurances that she would keep her children away from sexual abuse perpetrators, especially Wayne, Josh, and Charlotte who were specifically identified in the plan. As a result of this progress, the children were returned to Michelle's temporary custody for a trial home placement pursuant to a court order dated August 20, 1999.

Prior to the children's return home, their mother had met and married Roy. Therefore, Michelle found herself struggling to manage a household consisting of herself, her four young children, her new husband, and his two boys. Apparently equal to the challenge, Michelle regained custody of the children on November

24, 1999. However, after custody was returned, conditions in the home once again began to deteriorate, despite continued services to the family. The house again became cluttered and dirty. Because there was so little privacy, Ashley began seeking refuge and sleeping in a closet, which was found to be unsafe and prohibited by the housing codes. The DHS was also becoming increasingly troubled by the "open door policy" existing in Michelle's home. In addition to the six children and two adults officially residing in the home, many of Michelle's friends, and an increasing number of Tricinda's teen-age friends, were allowed to come and go at their pleasure. Due to these concerns, in March 2000, the State filed an Application to Modify Prior Orders seeking the removal of Michelle's children. Inspired by the threat of further intervention, Michelle and Roy again took control of their house, cleaned it up, and promised to reduce the human traffic flow.

However, these changes again proved short-lived. In July 2000, the deterioration of Michelle's home, and her waning commitment to case permanency goals became apparent. In a child abuse assessment completed on August 15, 2000, the DHS entered another founded abuse report for denial of critical care and lack of appropriate supervision of all six children residing in the home. The house was again in deplorable condition. In addition to the unsanitary physical condition of the home, Michelle's judgment regarding appropriate relationships was again called into question. She had repeatedly allowed Dennis, a registered sex offender rated as a high risk to re-offend, to associate with her children. There were reports of questionable sexual activity at late night parties mixing Michelle's adult friends, with Tricinda's teen-age friends,

and the younger children. It also came to light that Michelle's entire family, including all six children and John's father Pat, attended a wedding where contact with known sex offenders, including the subjects of a no contact order, would be inevitable.

Because the problems that initially led to the children's removal had resurfaced in Michelle's home, the DHS sought and obtained an order again removing all four children on August 31, 2000. Michelle and Patrick maintain that the children should be left in Michelle's custody. They argue that there was no "substantial and material change in circumstances" between November 24, 1999 when Michelle regained custody, and August 31, 2001, when she again lost custody. Additionally, Michelle and Patrick assert that the DHS was remiss in failing to make reasonable efforts to keep the family united. Finding no merit in either claim, we affirm the judgment of the juvenile court.

II. SCOPE OF REVIEW

Our review of an action arising from CINA proceedings is de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. Iowa R. App. P. 14(f)(7); *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). Our primary concern is the best interest of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The children's best interests, for purposes of determining a motion seeking modification of provisions of a prior dispositional order in CINA proceedings, are to be determined by looking at the children's long range, as well as immediate interests. *In re C.D.*, 509 N.W.2d 509, 511-12 (Iowa Ct. App. 1993). The future

can be gleaned from evidence of the parent's past performance and motivation. *T.B.*, 604 N.W.2d at 622.

III. MODIFICATION OF PRIOR DISPOSITIONAL ORDER

We have held that a party seeking to modify the custody provisions of a prior dispositional order in a CINA proceeding must show the circumstances have so materially and substantially changed that the best interest of the child requires the proposed change in custody. *In re J.F.*, 386 N.W.2d 149, 152 (Iowa Ct. App. 1986); *In re Leehey*, 317 N.W.2d 513, 516 (Iowa Ct. App. 1982).

We find that the State has proven the conditions in Michelle's home have materially and substantially changed since her children were returned to her custody in November 1999. After the children were initially adjudicated CINA and removed from the home, Michelle made a concerted effort to take the necessary steps to ensure the children's return. After making substantial progress in the area of housekeeping skills, and convincing social workers she recognized the importance of protecting her children from potential sexual abuse, the court returned the children to Michelle's custody. Unfortunately, these changes were merely temporary. After the children were returned home, Michelle allowed the housing conditions to deteriorate and reneged on her commitment to protect her children from the sexual predators she associates with. We concur with the juvenile court's assessment that this regression amounted to a change in circumstances so material and substantial that a change in custodial arrangements was required.

IV. REASONABLE EFFORTS

Michelle and Patrick assert that the juvenile court erred in determining reasonable efforts were made by the State to keep the children in the home. Maintaining family unity has been the primary goal of Michelle's fifteen-year involvement with the DHS. The juvenile court found that Michelle has received an intensive level of services since September 1997. She has received weekly family therapy from Ms. Follett. At no time did Michelle request individual counseling regarding being a victim or perpetrator of sexual abuse. In fact, these are two issues she flatly refused to address. Michelle also rebuffed repeated attempts to assist her family with housekeeping.

For all the reasons stated above and based on our de novo review of the record we find that the services offered to Michelle were ample, appropriate, and reasonable. We find no merit in the claim that reasonable efforts were lacking in this case. We find that modifying the prior dispositional order and placing the children in the custody of the DHS for foster care placement would serve the best interests of Tricinda, Ashley, Shauna and John. We affirm the decision of the juvenile court.

AFFIRMED.