

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1029 / 13-1409  
Filed November 6, 2013

**IN THE INTEREST OF L.F. and B.F.,  
Minor Children,**

**M.C., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Johnson County, Deborah Farmer Minot, District Associate Judge.

A mother appeals the juvenile court's dispositional order in a child-in-need of assistance proceeding. **AFFIRMED.**

William N. Toomey of Phelan, Tucker, Mullen, Walker, Tucker, & Gelman, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet M. Lyness, County Attorney, and Patricia Wier and Emily Voss, Assistant County Attorneys, for appellee.

Sally Peck, Iowa City, for father.

Anthony Haughton, Cedar Rapids, attorney and guardian ad litem for minor children.

Constance Peschang Stannard, Iowa City, for grandparent.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

**TABOR, J.**

The juvenile court placed two-year-old B.F. and his four-year-old sister L.F. in the custody of their paternal grandparents under the protective supervision of the Department of Human Services (DHS) after finding clear and convincing evidence B.F. suffered physical injuries “too numerous to count” while in the care of his mother and her fiancé. The mother challenges that finding in the dispositional order and argues the children should be returned to her care.

While we review the record de novo, we defer to the juvenile court’s findings of fact, especially when its determination depends on the credibility of witnesses whom the court heard and observed firsthand during “three long days of testimony.” See *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989). In its seventeen-page, single-spaced dispositional order, the juvenile court recounted in detail testimony and investigations involving these two children and produced a meticulous timeline of events leading up to their removal from parental custody. Ultimately, the court stated:

There is no doubt [B.F.] was physically abused, that abuse was severe, and that it was perpetrated by an adult. The evidence is clear and convincing that the abuse occurred on January 5 or 6, 2013, at the home of [B.F.’s] mother, Mary, and her fiancé, Mario. As his caretakers, they bear joint responsibility, although neither has accepted any responsibility, and unfortunately, the evidence does not establish which of them hurt [B.F.].

After reviewing the evidence anew, we harbor no serious doubts about the correctness of the juvenile court’s factual findings or the conclusions it has drawn from the record. Accordingly, we affirm.

## I. Background Facts and Proceedings

Mary and Matt are the parents of L.F., who was born in June 2009, and B.F., who was born in November 2010. In 2011 the parents separated and entered into a shared custody agreement. Matt has been diagnosed with bipolar disorder and struggles with sobriety. He lives with his parents, Patrick and Jane. Because Matt's medications affect his ability to care for the children, Patrick and Jane ensure another adult is available when B.F. and L.F. are in their father's care. After the separation from Matt, Mary initially lived with her father Randy.<sup>1</sup> In October 2012, Mary moved in with Mario, a divorced man who shares custody of his young daughter. Mary and Mario are both phlebotomists in Iowa City, and Mary is studying to be a nurse. Both Mary and Mario have a history of depression. At the time of the disposition hearing, Mary and Mario were engaged and expecting a child.

L.F. has had difficulty with her parents' separation and her mother's new relationship. Mary took L.F. to a counselor in the summer of 2013 because, in Mary's words, L.F. was "being mean to Mario." In the fall of 2012, L.F. started losing hair and her family physician diagnosed her with stress-related alopecia and adjustment disorder with anxiety. L.F.'s well-child check-ups showed steady weight gain through November 2012. But by January 2013 she had lost three pounds, and was outweighed by her younger brother B.F. L.F.'s daycare provider described the little girl as "socially introverted, timid and an emotional train wreck."

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<sup>1</sup> Mary's mother died in 2010 after a long battle with cancer.

On December 21, 2012, Matt and his father Patrick were giving B.F. a bath when they noticed several small bruises, including one larger than a dime, on the boy's upper chest and stomach. They were concerned enough to photograph the injuries. When they confronted Mary about the marks, she denied knowing how they were inflicted, but suggested maybe her new puppy had jumped up on her son and caused the bruises. Patrick was uneasy, but accepted her explanation.

Patrick grew suspicious again in early January 2013. The children stayed overnight with Matt and his parents on January 3. Despite helping the children into their pajamas and dressing them the next morning, Matt and his mother Jane saw no injuries on the children, with the exception of a small bruise on B.F.'s cheek. When asked if she knew what happened, L.F. said it was a "secret." From January 4 through January 7, the children stayed with Mary and Mario. On January 6, Mary called Matt to report L.F. had hit B.F. with her American Girl doll and had been pinching him, causing some bruising. Mary also said she would not be bringing B.F. to Matt's house on January 7, despite the fact it was his day to care for the children. Patrick called the police Sunday night, January 6, and showed the responding officer the photograph he had taken of B.F.'s injuries from December 21.

The police called DHS worker Cathy Ravazi, who contacted Mary on Monday, January 7. Ravazi saw Mary, Mario, and both children at their home. The worker noted seven small bruises on B.F.'s face. Mary blamed the bruising on L.F., accusing the child of pinching her little brother when her mother was not

watching. Mary volunteered that her son also had “a little on his back” and pulled his pants down and shirt up so the DHS worker could see the bruises. Ravazi remembered being “overwhelmed” by the numerous, dark brown bruises she saw on the two-year-old boy’s lower back and buttocks.

Ravazi advised Mary she should take the children to the St. Luke’s Child Protection Center (CPC) right away. Mary and Mario drove the children to the CPC. Dr. Butteris examined both children. He characterized B.F.’s injuries as “too numerous to count.” The child suffered bruising on his forehead and both cheeks, his right ear, and his chin. His frenulum, the small fold of tissue connecting the upper lip to the gums, was torn. B.F. had petechial marks on both sides of his neck. The doctor also noted “significant bruising” on the boy’s abdomen and on his back, above and below his shoulder blades. The doctor chronicled more than twenty bruises on B.F.’s lower back and bruises on his thighs in a linear pattern. In addition, B.F., like his sister, showed hair loss. The doctor opined the boy’s bruises were “non-accidental” and resulted from physical abuse.

L.F.’s physical examination at the CPC also revealed several bruises on her back and sides raising concern for non-accidental trauma. A CPC worker recorded an interview with L.F. The four-year-old girl said “everything’s almost okay” at her mom’s house. She said she thinks she hit B.F. with her “big pink pony” and her American Girl doll. She also told the interviewer the bruises on her brother’s forehead may have come from her pinching him there. She said she was “going to start working on being nice to him.” When asked about family

secrets, L.F. said she was promised a toy when she was done with the interview, but it was “supposed to be a secret.” After watching the interview, DHS worker Ravazi concluded L.F. has been “coached.”

Police investigated the child abuse, interviewing all of the caregivers and conducting polygraph examinations. The polygraph examiner scored Mary as “not showing deception” though she received lower scores on the questions related to who caused B.F.’s injuries. Mario showed signs of deception and the detective believed he intentionally tried to manipulate the exam. Grandparents Patrick and Jane also showed “some deception” in their responses, though the examiner suspected their scores may have been affected by medications they were taking and their sympathetic response to questions about injuries to their grandson. The police believed Matt was “not a suitable candidate” for the polygraph based on medications he was taking for his mental illness.

The juvenile court removed the children from their parents’ homes and placed them with relatives.<sup>2</sup> After the State initiated child in need of assistance (CINA) proceedings, the parents stipulated to the children’s CINA adjudications pursuant to Iowa Code section 232.2(6)(b) (2013).<sup>3</sup> On March 22, 2013, after considering the State’s exhibits, the juvenile court accepted the stipulation and continued placement with the children’s maternal grandfather.

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<sup>2</sup> The children were originally placed with Matt’s cousins, but they reported being intimidated by something Mario yelled after a court hearing, so the DHS moved the children to the home of Randy, their maternal grandfather.

<sup>3</sup> This provision defines a child in need of assistance as an unmarried child “[w]hose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.” Iowa Code § 232.2(6)(b).

The court held a dispositional hearing over three days: April 9, April 23, and May 7, 2013. Mary testified at the hearing, variously blaming her son's injuries on a puppy, her young daughter, her estranged husband, and his parents. The children's guardian ad litem (GAL) did not believe at this dispositional stage that either parent could be relied upon to provide a safe environment. The GAL recommended the children continue in DHS custody for placement with their paternal grandparents. While their maternal grandfather was a suitable care giver, the GAL noted it was an increasing strain for him to care for both young children on his own.

On July 25, 2013, the court entered its order placing custody of the children with their paternal grandparents. The order restricted Matt from being the sole caregiver because of his mental health. The order also found the previous visitation schedule—with frequent switching of caregivers—was not in the children's best interest. The court directed the DHS to schedule a family team meeting to discuss a new visitation schedule. The court encouraged liberal visitation for Mary, but directed it be supervised by the DHS or a family member. The court also authorized the DHS to develop a plan to gradually reintroduce Mario into the children's lives, but required his contact with the children to be supervised by the DHS. The court articulated family reunification as the permanency goal. Finally, the court ordered the mother to complete a psychological evaluation.

Mary filed a motion to enlarge or amend under Iowa Rule of Civil Procedure 1.904(2). She requested the court "enter additional orders and

recommendations of appropriate measures that can be taken by [the mother] in order to address the circumstances and concerns described by the Court, including but not limited to efforts that would constitute reasonable efforts” as described by Iowa Code section 232.102(10).

The juvenile court denied the mother’s motion on August 21, 2013. In doing so, the court noted the mother “did not request any particular, additional or different services at the dispositional hearing.” The court advised the mother to make any requests for additional services to the DHS “in writing immediately” and to object to the proposed case permanency plan if it failed to incorporate appropriate services. The mother filed a notice of appeal on September 4, 2013.

## **II. Analysis**

The mother seeks reversal of the dispositional order on two grounds. First, she claims the record does not contain clear and convincing evidence to support the juvenile court’s decision that B.F.’s injuries occurred during the early January weekend when the children were in her home. Second, she criticizes the juvenile court for denying her motion to enlarge and amend, asserting the court should have offered more direction regarding reunification services and reasonable efforts by the DHS. We find no merit in either claim.

On the issue of clear and convincing evidence for continued removal, Mary contends she “cooperated fully with the investigation of this matter” and should have been given custody of the children. Mary focuses on the polygraph examinations taken by the children’s caregivers. She points out that her score showed she was “not showing deception” while the paternal grandparents “failed”



their polygraph exams. She acknowledges Mario also “failed” his polygraph, but attributes the finding of deception to the fact he is not a native English speaker.

We are not convinced by Mary’s argument regarding the polygraph results. The investigating officer explained why the grandparents’ polygraph results may have indicated some deception, including medications they were taking and their emotional reaction to the abuse suffered by their grandson. Moreover, our courts have determined that “results” of a polygraph examination are generally inadmissible because of their unreliability. See *In re E.H. III*, 578 N.W.2d 243, 247 (Iowa 1998). The polygraph “results” do not detract from the clear and convincing evidence supporting the court’s dispositional order.

After children are adjudicated as CINA, juvenile courts are to make the “least restrictive disposition appropriate considering all the circumstances of the case.” Iowa Code § 232.99(4). Upon our de novo review of the dispositional order, we find clear and convincing evidence that the court’s transfer of custody of L.F. and B.F. to their paternal grandparents, under DHS supervision, is the least restrictive disposition considering the findings of the investigation into the physical abuse inflicted on B.F. See *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994). The juvenile court drafted an incredibly comprehensive, thorough, and objective history of the circumstances leading up to the children’s removal. When considered in their totality, the facts inexorably lead to the realization that Mario or Mary physically abused B.F. The record also shows the couple shamelessly enlisted then three-year-old L.F., who was already ridden with anxiety, to take the blame for B.F.’s injuries during her CPC interview.

The juvenile court properly refused to allow the children to return to Mary's unsupervised care when she failed to acknowledge any responsibility for the harm they suffered in early January. "A parent's failure to address his or her role in the abuse may hurt the parents' chances of regaining custody and care of their children." *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). It is questionable whether Mary will be able to ensure a safe environment for B.F. and L.F. going forward if she does not recognize her role in committing or exposing them to physical or emotional abuse in the past. See *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988).

Turning to the rule 1.904(2) motion, we—like the juvenile court—view Mary's objections as premature. The court explained how the mother may request additional or different services as part of the case permanency plan being developed by the DHS. If the DHS does not offer appropriate services, the parents may advance a reasonable-efforts argument at a permanency review hearing. The court's reasoned response to the rule 1.904(2) motion is not grounds for reversing the dispositional order.

**AFFIRMED.**