

**IN THE COURT OF APPEALS OF IOWA**

No. 3-165 / 12-1838  
Filed February 27, 2013

**IN THE INTEREST OF C.N. and B.N.,  
Minor Children,**

**A.N., Mother,**  
Appellant,

**M.N., Father,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Mary Timko,  
Associate Juvenile Judge.

A mother and father appeal separately from the order modifying  
placement of two of their children. **AFFIRMED.**

Angela Kayle, Sioux City, for appellant mother.

Patrick Tott, Sioux City for appellant father of C.N. and B.N.

Thomas J. Miller, Attorney General, Julia Kim, Assistant Attorney General,  
Patrick Jennings, County Attorney, and J. Aaron Kirsch, Assistant County  
Attorney, for appellee State.

Joseph Kertels, Sioux City, for minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

A mother and father appeal separately from the order modifying placement of two of their children and denying their motions to modify the dispositional order to have the children's custody returned to the parents. They contend the court applied the wrong burden of proof, the State did not prove a substantial change warranting modification, modification is not in the children's best interests, and the State did not make reasonable efforts to reunify the children with the mother.

The parents have six children. The oldest child was removed from the family home in August 2011. In October all six children were adjudicated children in need of assistance, and the youngest five children were allowed to remain with the mother. The five youngest children were removed from the home in late October. B.N., who has cerebral palsy and mental retardation, was placed in shelter care. C.N. was placed in foster care with a younger sibling. C.N. later was moved to a different foster home. The April 2012 dispositional order found "reasonable efforts were made to avoid the necessity of an out-of-home placement and that the return of the children at this time would be contrary to their well being." The order did not change any placements.

On May 8 the State filed a motion to modify the dispositional order as to B.N. seeking a move from shelter care to a group home with services appropriate for B.N.'s cerebral palsy and mental retardation. On May 18 the State filed a motion to modify the dispositional order as to C.N. seeking placement in a psychiatric mental institution for children based on C.N.'s "aggression toward younger children, threats to kill others, sexual inappropriateness, and defiance to

authority,” resulting in difficulty finding a placement in foster care. On May 22 the father filed a motion to modify disposition asking the court to place custody of B.N. and C.N. with the parents. On May 23 the mother filed an identical motion to modify, asking the court to place custody of B.N. and C.N. with the parents.

The motions came on for hearing on June 5, July 16, and August 9 and 31. In late September the court issued its order sustaining the State’s motions to modify and denying both parents’ motions. The court scheduled a dispositional review/permanency hearing for January 24, 2013. Both parents appeal.

Our review of child in need of assistance proceedings is *de novo*. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). Modification of a dispositional order is provided for in Iowa Code section 232.103 (2011). In order to modify a dispositional order, the party seeking modification must show the circumstances have so materially and substantially changed the best interests of the child require such a change. *In re D.G.* 704 N.W.2d 454, 458 (Iowa Ct. App. 2008).

*Claims Common to Both Parents.* The father and mother both contend the court used the wrong burden of proof by requiring clear and convincing evidence. They contend the proper burden for their request to have the children returned to their custody is a preponderance of the evidence. See Iowa Code § 232.102(9). The court correctly identified this as an action to modify a dispositional order. *Id.* § 232.103.

In our *de novo* review, we consider whether “the circumstances have so materially and substantially changed the best interests of the child require” the modification. *D.G.*, 704 N.W.2d at 458. We conclude the State proved the grounds for modifying the dispositional order as to both B.N. and C.N.,

particularly because B.N.'s special needs require specialized services and C.N.'s psychological and behavioral issues made it difficult to find a foster care placement adequate to meet his needs.<sup>1</sup>

Even if we apply the standard of proof in section 232.102(9) to the parents' motions to modify the disposition, we conclude neither parent proved by a preponderance of the evidence there has been a "change in circumstances since the original hearing which would warrant returning the child to the parent." See *In re A.Y.H.*, 483 N.W.2d 820, 822 (Iowa 1992) (citation omitted).<sup>2</sup> A child cannot be returned to the custody of the child's parents as provided in section 232.102 if doing so would place the child at risk of harm that would justify finding the child in need of assistance. See Iowa Code § 102(5), (7), (9).

The parents argue they have complied with services, the house now is clean, and they can provide for these children's needs. The record is clear the parents lack insight into both B.N. and C.N.'s needs and did not act to meet those needs. Both children suffered either from physical abuse or neglect. The parents deny the abuse or blame the children. "It is essential in meeting a child's needs that parents recognize and acknowledge abuse. Meaningful change cannot occur without this recognition." *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995) (citation omitted). These two children would be at risk of further harm if returned to their parents.

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<sup>1</sup> We note, however, even though the September modification order sustained the State's motions as to both children, it appears the State at some earlier point withdrew its motion to place C.N. in a treatment facility. C.N. was placed in a different foster home, so there was no modification as initially requested.

<sup>2</sup> In a review hearing, a parent seeking to regain custody has the burden to prove by a preponderance of the evidence there has been a change in circumstances that would warrant returning the child to the parent. See *In re Welcher*, 243 N.W.2d 841, 844 (Iowa 1976) (discussing an earlier version of chapter 232).

Both parents contend the court erred in finding it was not in the children's best interests to be returned to their parents' custody. Based on the circumstances outlined above, we conclude the best interests of these two children require continued placement outside their parents' home. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (looking to a parent's past performance to determine the quality of care a parent is capable of providing in the future).

*Mother.* The mother contends the State did not provide enough resources to her and "did not use fair and honest interactions" with her to support reunification. We understand this as a reasonable efforts claim. See Iowa Code § 232.102(10). The mother does not point to any services she requested the court did not order provided to her or any other lack of reasonable efforts. This issue is not preserved for our review. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (finding a parent's failure to demand other or additional services was insufficient to preserve the issue for appellate review).

*Father.* The father contends the court erred in concluding the children could not be returned to their parents' custody at the present time. See Iowa Code § 232.102. A child cannot be returned to the custody of the child's parents as provided in section 232.102 if doing so would place the child at risk of harm that would justify finding the child in need of assistance. See *id.* § 102(5), (7), (9). The parents lack insight into both B.N. and C.N.'s needs and did not act to meet those needs. Both children suffered from physical abuse or neglect. The parents deny the abuse or blame the children. "It is essential in meeting a child's needs that parents recognize and acknowledge abuse. Meaningful change cannot occur without this recognition." *L.B.*, 530 N.W.2d at 468. Other than

cleaning the family home, the parents have not dealt with the circumstances leading to the children's adjudication as children in need of assistance. Therefore, these two children would be at risk of further harm if returned to their parents.

The father also contends the State did not prove by clear and convincing evidence modification of the dispositional order to place B.N. at Courage Homes was warranted. He argues B.N. is not receiving services in the new placement, and the parents are willing to provide B.N. the services recommended if B.N. is returned home.

We have already concluded the State proved a material and substantial change in circumstances warranted modifying the dispositional order as to both children. B.N. is safe from harm in the new placement and is making progress in daily functioning and activities. The parents' failure to address the issues of abuse in the home belies their claim they could now provide for B.N. if returned to their care.

For the reasons set forth above, we affirm the district court's order sustaining the State's motions and denying the parents' motions.

**AFFIRMED.**