IN THE COURT OF APPEALS OF IOWA

No. 2-046 / 11-1869
Filed June 13, 2012

IN THE INTEREST OF K.P., C.P., D.N., J.S., and H.S.,
Minor Children,

D.N., Father of D.N. and H.S.,
Appellant,

B.S., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachel E. Seymour, District Associate Judge.

A mother and father appeal a juvenile court ruling regarding placement and visitation in a child-in-need-of-assistance proceeding. **REVERSED AND REMANDED.**

Laura J. Lockwood of Pargulski, Hauser & Clarke, P.L.C., Des Moines, for appellant-father of H.S. and D.N.

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant-mother.

Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for maternal grandmother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer G. Galloway, Assistant County Attorney, for appellee.

Christopher R. Kemp of Kemp, Sease & Dyer, Des Moines, for father of C.P. and K.P.

Thomas G. Crabb, Des Moines, for father of J.S.

Nicole Garbis Nolan, Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

The mother and one of the fathers of five children appeal the juvenile court ruling modifying placement of the children and denying the mother's visitation requests. We find that placing the children with DHS for foster care was not the least restrictive placement and was contrary to the best interests of the children. We further find that because the evidence shows the mother is excelling at the services provided, the juvenile court erred in denying her request for reasonable efforts to increase visitation and attempt reunification. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

I. Background Facts and Proceedings.

The mother has five children: H.S. (born February 2002), J.S. (born February 2004), D.N. (born May 2007), C.P. (born November 2009), and K.P. (born July 2010). D.N. Sr. is the father of H.S. and D.N. The other two fathers have not appealed and their rights are not at issue in this opinion.

The children came to the attention of the Iowa Department of Human Services (DHS) in August 2010, after ten-month-old C.P. suffered significant burn injuries to his feet. The burn injuries were more severe on his left foot, where the child sustained a partial thickness burn covering the distal two-thirds of the sole of the foot extending around to one-third of the top of the foot as well as between the toes. The burned and unburned areas of the left foot were separated by a sharp demarcation. The mother testified the injuries occurred accidentally when the child opened and stood upon a hot oven door. However, medical professionals opined that the injuries were most consistent with an immersion

burn, not a flat-surface contact burn. In addition, drug concerns were raised when a hair sample from C.P. tested positive for opiates. Medical professionals stated that it would have been impossible for the positive test to have been the result of any medication administered at the hospital, and that C.P. had to have been exposed to a medication containing morphine or codeine prior to his admission. In the subsequent investigation into possible drug use, the mother bleached her hair twice and one of the fathers, J.P., shaved his and the three older boys' heads.

Based on these two incidents, two child protective assessments and a criminal investigation were initiated. The first child protective assessment was founded and confirmed for physical abuse by the mother and the mother was placed on the child abuse registry. The second assessment concerning drug use was also founded for denial of critical care for failing to provide proper supervision. The criminal investigation eventually resulted in the mother being charged by trial information with child endangerment causing a bodily injury, a class "D" felony, and neglect of a dependant person, a class "C" felony. *See* Iowa Code §§ 726.6(1)(a), 726.6(6), 726.3 (2011).

On November 22, 2010, nearly three months after the injury to C.P., the State initiated this juvenile action by requesting a temporary removal order, and filing a petition alleging the children to be children in need of assistance (CINA). Even though the children had remained in the mother's care since the injury to C.P., the juvenile court granted the removal request and all five of the children were placed into the temporary legal custody of a maternal aunt. But, following a

removal hearing on November 30, custody of the two older children (J.S. and H.S.) was changed to a different maternal aunt, while custody of the younger children (K.P., C.P., and D.N.) remained with the initial maternal aunt.

On January 10, 2011, the children were adjudicated CINA under Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2009). The juvenile court specifically found that the injuries suffered by C.P. were non-accidental and "clearly not consistent with the mother's explanation." At this time, all visits between the children and their respective parents were only allowed with professional supervision.

On April 4, 2011, the juvenile court filed a dispositional order finding that neither of the maternal aunts could be considered as a concurrent plan for the children. The juvenile court summarized the evidence and testimony as:

> Court heard testimony from the two custodians regarding their ability to provide for the children's long-term care. Both custodians testified they did *not* believe the injury suffered by [C.P.] was inflicted by the mother nor did they believe the injury was intentionally inflicted. [The maternal aunt caring for K.P., C.P., and D.N.] testified that she did not have *any* concerns about Mother's parenting ability. [The maternal aunt caring for J.S. and H.S.] testified she did not know why [the father, J.P.,] went to prison nor did she care why he went to prison.[1] Both custodians are willing to keep the children long-term but both are in need of respite care.
>
> Court also heard testimony from Eileen Swoboda. Ms. Swoboda reviewed the majority of the evidence that has been submitted to the Court, including: the psychological, CPA, doctor's reports/findings, and photos of the injury. Ms. Swoboda testified that delaying the decision about long-term placement may not be in the children's best interest and recommended the matter be resolved in approximately one month. She was concerned about the family's lack of curiosity about how the injury occurred. She

[1] J.P. went to prison for neglect of a dependant person stemming from the death of his son in 2004.

> testified that it is very problematic the family does not recognize the safety issue of this injury and Mother's explanation for it. She explained that this poses a risk to the children because they will not know who to trust and will not be able to reconcile their knowledge of the events and the adults' explanation of the events. Therefore, they may not be able to heal from that trauma. She further stated that stability was important but safety should be the primary consideration when evaluating placement. Her opinion was that due to the children's ages they should not have input as to their placement and there should be thoughtful planning so the next placement would be the last, pending return to the parents.

(Emphasis in original, footnote inserted).

Following the April 4, 2011 dispositional order, the maternal aunt who had K.P., C.P., and D.N. in her care provided a ten-day notice that she could not continue to provide care for the children. Accordingly, the State filed a request to modify the prior dispositional order. The request resulted in a temporary transfer of custody of K.P. and C.P. to DHS for foster care placement and D.N. to his paternal grandmother pending further hearings. J.S. and H.S. continued their placement with the other maternal aunt.

Contested modification hearings were held on May 23, June 6, June 13, and July 6, 2011. The mother testified on the first day of the hearings (May 23). She continued to assert that C.P. was injured while stepping on a hot oven door, and a friend testified corroborating the mother's testimony. Then, on June 1, 2011, the mother resolved the criminal charges through a plea agreement with the State. Pursuant to the agreement, the mother entered an *Alford* plea[2] for

---

[2] *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). An *Alford* plea is a procedure in which the defendant does not admit guilt, but acknowledges the evidence strongly negates the defendant's claim of innocence and enters a guilty plea to avoid a harsher sentence. *State v. Knight*, 710 N.W.2d 83, 84-85 (Iowa 2005).

child endangerment causing bodily injury, a class "D" felony, and the State dropped the neglect of a dependant person charge. The mother was placed on probation.

The maternal grandmother testified on the second day of the hearings (June 6). Prior to her testimony, the parties stipulated that the maternal grandmother's home is physically appropriate and acceptable. The parties further stipulated that the maternal grandmother believed her daughter's version of the events that she did not cause any injury or know of anyone who intentionally caused an injury to C.P. The maternal grandmother testified she would follow any no-contact or supervisory orders from the juvenile court regarding the children, would ensure they attend therapy, and would be willing to take the children permanently. The maternal grandmother acknowledged she had been the victim of domestic violence when caring for her own children. She further testified she is currently in a relationship with a man who has a criminal history consisting of some drug and assault convictions that predates her involvement with him. Their relationship started seven to eight years ago, and she testified that their relationship has never had any domestic violence.

The paternal grandmother of D.N. testified on the final day of the hearings (July 6). She stated that D.N. is "very comfortable" in her care. The paternal grandmother admitted that she is currently married to a man who is in prison, but she is in the process of getting a divorce. She further admitted that her first marriage with D.N. Sr.'s father included several incidents of domestic violence. The paternal grandmother also testified she believed her son, D.N. Sr., has

anger management issues, and she is concerned about his yelling. She also described an incident where she had to remove D.N. during a visit because D.N. Sr. screamed at D.N. and two children he has from a different relationship for arguing with one another.

Following the hearings, the juvenile court left the record open until July 29 so the parties could submit written positions regarding placement. Each party in the case requested a different placement. The mother requested that all five children be returned to her care or alternatively placed with the maternal grandmother. D.N. Sr., the father of D.N. and H.S., requested that his two children as well as J.S. be placed with his mother (the paternal grandmother who was currently caring for D.N.). The father of J.S. requested his child be placed into his care or alternatively with the maternal grandmother. The father of C.P. and K.P. requested a relative placement or with the maternal grandmother. DHS requested the three oldest children (H.S., J.S., and D.N.) be placed with the maternal grandmother, and the two younger children (C.P. and K.P.) be placed in DHS custody for foster care. The guardian ad litem requested the three older children be placed with the paternal grandmother, while the younger two children be placed in DHS custody for foster care.

While the dispositional modification order was pending, multiple motions were filed by the parties. On September 7, 2011, the maternal grandmother moved to intervene in the CINA proceedings. Two weeks later, the mother filed a motion for reasonable efforts requesting that she be allowed to progress to semi-supervised and unsupervised visitation. The mother argued the criminal no-

contact order that had previously restricted her visits to being professionally supervised had been rescinded on September 7, 2011. She further argued that she had complied with all services during the pendency of the case and all of her interactions with the children were appropriate. Then, on October 12, 2011, the State filed a petition to terminate all parental rights to the children under Iowa Code sections 232.116(1)(d), (f), (h), and (i) (2011). The termination petition was scheduled for trial on January 30, 31, and February 1, 2012, but was stayed by the supreme court pending resolution of this appeal.

The mother's request for increased visitation came to a contested hearing in conjunction with the maternal grandmother's application to intervene on October 17, 2011. At the hearing, all the parties agreed that this case has come to a "standstill." It was recognized that the mother had a strong bond with the children, submitted to all the requested drug tests, which were all negative, completed a parenting class, attended weekly individual mental health therapy, attended all twice weekly professionally supervised visits, was attentive and appropriate during visits, and maintained appropriate housing and employment. The mother continued to deny that the abuse was anything but accidental, and denied that it occurred as found in the medical reports and previous juvenile court findings. It was also noted that the paternal grandmother had a home study approved on her home, and was in the process of becoming licensed as a foster care facility. Toward the close of the hearing, the juvenile court questioned the maternal grandmother as follows:

> COURT: [Maternal grandmother], the last time we were in court you obviously had an opportunity to testify, and you told this

> court that you did not believe that your daughter was involved either in directly causing the injury or covering up somebody that – causing the injury. I guess I want you to have the opportunity to tell me whether or not your position about that has changed or how it is exactly you think that [C.P.] received the burn to his foot.
>
> MATERNAL GRANDMOTHER: I really don't know. I was not there. I wished I did know. But yes, I am open-minded to that could have happened a different way. But I do not know.
>
> THE COURT: Well, do you believe that your daughter would do it?
>
> MATERNAL GRANDMOTHER: I don't really know what to believe anymore through all this. All I know is I'm being accused of things that I have not done. I have not had no fair chance. I have been without my grandkids for over a year, and I've only been supervised. And I have not broken anything in this court.
>
> . . . .
>
> I am very upset, because I have been very, very close to my grandkids. I have been there for them. I am still there for them. But I can't even take them. I couldn't take them fishing. I couldn't do nothing with them. And it is upsetting. It is very upsetting about the lies going on here. I am financially stable. I will take care of my grandkids. I will keep them away from my daughter. I can promise the court that. But please, give me a chance to prove that.
>
> THE COURT: Let me ask you this: Do you think that the injury that [C.P.] had was accidental or was intentional?
>
> MATERNAL GRANDMOTHER: Ma'am, I don't know anymore. I have been through so much this year. I just want a chance to prove to you people I love my grandkids. I've been there for them since birth.

The juvenile court stated on the record that reasonable services have been provided to the mother, and that her request for additional visitation was denied.

On November 4, 2011, the juvenile court entered a CINA modification order placing all five children with DHS for family foster care. The juvenile court denied the mother's request for placement citing her continued denials that the injury was non-accidental. The juvenile court also denied the maternal and paternal grandmothers' requests for placement. In denying the grandmothers'

requests, the juvenile court focused on two issues: (1) the maternal grandmother's refusal to acknowledge her daughter abused C.P., and (2) the grandmothers' "past performance" in parenting their own children, which focused on their respective histories of being in domestically violent relationships. In regards to the maternal grandmother's refusal to accept the abuse finding, the juvenile court stated:

> For a year, the maternal grandmother . . . has consistently stated she did not believe the mother intentionally harmed the child and instead has chosen to believe the Mother's far-fetched explanation of the injury. The Court has given the family a great deal of time to reconsider their blanket acceptance of Mother's version. While [the maternal grandmother] has very recently stated she is *willing to consider* the injury occurred different than Mother's explanation, she still refuses to accept the prior finding of this Court. Prior testimony from an expert in children's mental health issues, informed this Court the children remain at risk when a person is not able or willing to identify the harm suffered. She also opined the children will have a difficult time healing from this trauma if they cannot reconcile the actual events with their caregiver's version of the events. If Mother's continued denial of child abuse prevents placement with a parent, the Court can have no lesser standard for relative care.

(Emphasis in original). In focusing on the "past performance" of the grandmothers, the juvenile court cited each grandmother's history of being domestically abused and the chaotic home life that resulted for each. The juvenile court concluded:

> This Court does not doubt the strong desire of either [the maternal grandmother] or [the paternal grandmother] to have the children in their care. The Court does not believe either of these relatives can provide an appropriate, safe home for these children because they did not do it for their own children.

The juvenile court further stated visitation would remain at DHS discretion.

On November 7, 2011, the juvenile court filed a separate order denying the maternal grandmother's motion to intervene finding her legal interest in the CINA proceeding was adequately represented by the mother and the county attorney. The maternal grandmother appealed this determination. We reversed and remanded for an order permitting the maternal grandmother to intervene. *See In re K.P.*, No. 11-1819, 2012 WL 664533 (Iowa Ct. App. Feb. 29, 2012). We subsequently held this case to permit the maternal grandmother to submit briefing to this court.

This appeal from the modification ruling was filed by the mother and D.N. Sr. raising two issues: (1) did the juvenile court err by placing all of the children with DHS for family foster care, and (2) did the juvenile court err by denying the mother's motion for increased visitation. The State and the maternal grandmother[3] filed responses.

II. Standard of Review.

We review CINA proceedings de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Contrary to the State's assertion, even though the juvenile court may have to use its best judgment in determining a child's best interests for placement and visitation, this does not mean we review its decision for an abuse of discretion. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although not bound by the juvenile court's factual findings, we give them weight, especially when considering the credibility of witnesses. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa

[3] Procedurally, maternal grandmother was denied an opportunity to appeal as her motion to intervene had been denied and time for appeal had expired before she was allowed to intervene. Thus, the court allowed her to file a response.

2001). "The most important consideration in any CINA case is the best interest of the child." *D.D.*, 653 N.W.2d at 362.

III. Placement.

A. Authority. The State concedes that DHS requested the three older children (H.S., J.S., and D.N.) be placed with the maternal grandmother, and that it did not appeal the juvenile court's ruling denying this placement. Accordingly, the State makes no argument on appeal regarding the modification of the three older children's placement.

But, in regard to the two younger children (K.P. and C.P.), the State argues the two children were kept in DHS custody pursuant to a dispositional review order under section 232.102(9); thus, the juvenile court was not authorized to change placement to the maternal grandmother. *See*, *e.g.*, *In re K.B.*, 753 N.W.2d 14, 16 (Iowa 2008).

We find two problems with the State's argument. First, the State filed the request to modify placement upon receiving the maternal aunt's ten-day notice. Thus, we find the State waived any argument to the juvenile court's authority to modify placement.

Second, the two younger children were not placed with DHS pursuant to a dispositional order under section 232.102, but pursuant to a temporary order under section 232.78(6). Thus, section 232.102(9) is inapplicable. *See* Iowa Code § 232.102(9) (requiring the juvenile court to "hold a periodic dispositional review hearing for each child *in placement pursuant to this section* in order to determine whether the child should be returned home, an extension of the

placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted" (emphasis added)). Since the juvenile court order on November 4, 2011, was an extremely delayed modification order necessitated by the maternal aunt's ten-day notice and not a dispositional review order, the juvenile court had the authority to place the two younger children with someone other than DHS.

B. Least Restrictive Placement. The mother, the maternal grandmother, and D.N. Sr. each assert that the juvenile court erred in modifying the dispositional order such that all of the children were placed into family foster care. Each party argues that the grandmothers of the children were the preferred and least restrictive placements.

Following the conclusion of a dispositional hearing, the juvenile court "shall make the least restrictive disposition appropriate considering all the circumstances of the case." Iowa Code § 232.99(4). The dispositions "are listed in sections 232.100 to 232.102 in order from least to most restrictive." *Id*. Accordingly, the least to most restrictive dispositions are: (1) "suspending judgment and continuing the proceedings," *Id*. § 232.100; (2) "permitting the child's parent, guardian or custodian . . . to retain custody," *Id*. § 232.101(1); and (3) "transferring the legal custody of the child." *Id*. § 232.102. When transferring legal custody, the juvenile court may order placement with:

> (1) A parent who does not have physical care of the child, other relative, or other suitable person.
> (2) A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
> (3) The department of human services.

Id. § 232.102(1)(a)(1)-(3).

The parties argue that as "relatives," the grandparents were preferred over DHS and less restrictive as a placement under section 232.102(1)(a). We agree. The "goals of chapter 232 [are] to provide for the child's welfare and promote placement with parents or relatives." *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995). Thus, the home of a relative is considered less restrictive than placement in a private agency, facility, or institution or placement with DHS. *Id*. Further, this interpretation is in line with federal regulations, which require States to consider "giving preference to an adult relative over a non-related caregiver when determining a placement for a child." 42 U.S.C. § 671(a)(19). However, even though we find the grandparents are preferred over DHS, placement with the grandparents must still be in the children's best interests. *D.D.*, 653 N.W.2d at 362; *see also* Iowa Code § 232.1 (stating the court shall "liberally construe" chapter 232 to ensure each child receive "the care, guidance and control that will best serve the child's welfare").

The juvenile court concluded that because the maternal grandmother should be held to the same standard of admitting the mother's blame as should be applied to the mother, and because of her failure to admit what the juvenile court determined that her daughter did, she should not be considered a placement option for any of the children. The only apparent reason for such a requirement would be to conclude the maternal grandmother is as blameworthy for the injury to the child, and thus the child is at the same level of risk if in the care of the maternal grandmother as the risk the juvenile court assessed to the

child if the child were in the care of the mother. There is basis in fact for determining risk to the child if in the care of the mother. But, there is no basis in fact for determining the same risk in the care of the maternal grandmother. To require the maternal grandmother admit her daughter did something, anything, that she did not witness, and would rather not believe to be true, is not supported by case law and does not make sense under the facts in this case. The rationale that is applied to a requirement that a perpetrator should admit responsibility is founded in the belief that behavior cannot change without a public admission, or at the least, an admission in a therapeutic environment. *See*, *e.g.*, *State v. Iowa Dist. Ct.*, 801 N.W.2d 513, 519-20 (Iowa 2011) (discussing the rehabilitative purpose of accepting responsibility in sex offender treatment). There is no such authority as to caregivers who are not perpetrators. And, there is no factual basis upon which to reject the maternal grandmother's representations that she will abide by restrictions imposed by the court and DHS on the children's contact with the mother while the children are in the care of the maternal grandmother.

Among the other reasons included in the decision to deny the maternal grandmother an opportunity to parent the children under DHS and court supervision, notwithstanding that she had done so for years without DHS and court supervision and without any evidence of having placed the children at risk, are the findings that because she was a victim of domestic abuse while her own children were young, she is not now fit to parent. It is apparently true that the maternal grandmother did not always make the best choices while parenting her own children, but there is no evidence that she is guilty of criminal wrongdoing, or

that there was ever a child abuse or neglect investigation into her parenting, or any evidence other than that her daughter (the mother in this case) made poor choices as a teenager. The maternal grandmother is now in a long-term relationship with a man who, years before they got together, had a criminal history and a history of drug abuse. There is no evidence of either during the seven to eight years of their relationship together.

In summary, the juvenile court in this case seems to have determined the maternal grandmother's guilt by association and that she cannot mature or change her behavior with age. There is no evidence to support either of those conclusions. Rather, the stipulation of the parties is that the maternal grandmother's home is physically appropriate and acceptable, and the evidence shows that she is strongly-bonded with her grandchildren. DHS apparently saw no evidence of any safety risk as it recommended placement of three of the children with the maternal grandmother.

The juvenile court likewise rejected the paternal grandmother of D.N. because she had allowed herself to be a victim of domestic violence while raising her children. She later married a man who subsequently was sentenced to prison and was at the time of hearings getting a divorce. However, the paternal grandmother had cared for D.N. from April 2011 to November 2011 and no concerns were raised regarding her home or her ability to keep D.N. safe. The paternal grandmother was also taking D.N. to his therapy appointments, had recently had a home study approved on her home, and was in the process of becoming licensed as a foster care facility.

There is one other piece of evidence the juvenile court emphasized that must be addressed: the testimony of an expert witness who has not counseled with or even met any of the parties or the children, and since the April 2011 hearing has had no involvement in this case. The expert testified to general findings regarding child abuse, but apparently offered no specific opinion with regard to these children, the parents, or the grandparents. *See* Iowa Code § 232.102(5)(b) (stating removal and reasonable efforts determinations "must be made on a case-by-case basis"). While her opinion is of limited value as to any requirement that the mother admit to the allegations, it is of no value as to whether either grandmother should be denied a chance to parent these children. The logical extension of her opinion, and the conclusions of the juvenile court, appears to be that the children must be told by their caregiver(s) that their mother severely burned C.P.'s foot when he was ten months old. So, apparently, according to this witness, if the children are in foster care and ultimately adopted, the foster parents and adoptive parents must tell the children that C.P.'s mother intentionally caused the burn injury. Such a conclusion seems unnecessary and unlikely, it being enough for the children to know the injury occurred while in the mother's care and that she can no longer provide care for them.

In its de novo review, this court finds the maternal and paternal grandmothers should not have been rejected as placement options. Further, the children were at the time of removal closely bonded with both grandmothers, and so long as the grandmothers follow all recommendations of the juvenile court and DHS as they apparently are willing to do, it is consistent with Iowa and federal

law and is in the best interests of the children to be placed into their care. We reverse and remand so the juvenile court can order a custody arrangement in the best interests of the children considering the maternal and paternal grandmothers as the least restrictive placements.

IV. Visitation.

The mother also contends the juvenile court erred in not granting her semi-supervised or unsupervised visitation as a reasonable reunification effort. When a child has been removed from a parent's care, the State has the responsibility to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." *Id*. § 232.102(7). In making reasonable efforts, "[a] child's health and safety shall be the paramount concern." *Id*. § 232.102(10)(a) (defining reasonable efforts).

The reasonable efforts concept broadly includes a visitation arrangement "designed to facilitate reunification while protecting the child from the harm responsible for the removal." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

> Visitation, however, cannot be considered in a vacuum. It is only one element in what is often a comprehensive, interdependent approach to reunification. If services directed at removing the risk or danger responsible for a limited visitation scheme have failed its objective, increased visitation would most likely not be in the child's best interests.

Id.

Although the mother has participated in numerous services and made improvements in her life, the juvenile court denied the progression of visitation. She has done everything that every service provider and the juvenile court have

asked of her, except give a different explanation for the injury than that found by the juvenile court. Every supervised visitation has gone well, and she has parented appropriately on all those occasions. The mother contends the juvenile court is improperly predicating visitation on an admission or acceptance of how C.P. was injured, which violates her Fifth Amendment right against self-incrimination.

The Fifth Amendment right against self-incrimination has been found to be applicable in juvenile court proceedings. *See*, *e.g.*, *In re C.H.*, 652 N.W.2d 144 (Iowa 2002); *In re E.H. III*, 578 N.W.2d 243 (Iowa 1998). In *C.H.*, our supreme court held:

> The court may not compel [the father] to admit his guilt in order to be eligible to regain custody of his daughter. The court may, however, require [the father] to comply with the case permanency plan which includes treatment. Failure to do so may result in termination of his parental rights.

Id. at 149.

To the extent the mother had a Fifth Amendment right against self-incrimination as to the charges that were pending against her during these proceedings, there no longer remains a right against self-incrimination after she entered her *Alford* plea. From this vantage point, we cannot say that there are no circumstances under which she might still have a right to not incriminate herself as to criminal charges that could arise from this case. But a forced confession by her in this proceeding is not required under Iowa law. *Id*.

The mother has been denied all but limited, supervised visitation without any opportunity to increase visitation or be considered a placement alternative,

entirely based on her failure to admit those conclusions. There is no other reason. DHS has failed to offer services that would respond to the conditions that they have already concluded are the facts. Why, because mother has not admitted. The denial of visitation and placement or custody of the children hangs in the balance.

The juvenile court found the injuries were non-accidental, and the mother admitted in her *Alford* plea that there was sufficient evidence to convict her. Those are the adjudicated facts: that *is* what happened. Consequently, DHS could have and should have instituted services based on those findings. DHS did not, instead choosing to deny services, awaiting a confession, and insisting on a confession. While it may be true that the success of particular therapies or other services may be limited by failure to admit in some cases, that does not excuse DHS from its statutory duty to make a reasonable effort. Without providing these particular therapies or services to the mother such that she can confront and address the concern of physical abuse, DHS is unable to meet its burden to show that it is providing reasonable services. *E.H. III*, 578 N.W.2d at 250. The mother has participated and excelled at all the services provided to her. The fact that this case is at a "standstill" is not a result of the mother failing in her treatment or being unreceptive to services, but on DHS's requirement she admit guilt before receiving additional services.

Because the evidence shows the mother is excelling at the services provided, we find the juvenile court erred in denying the mother's request to proceed in visitation. We remand so DHS can proceed with reasonable efforts,

given the facts it believes to be true, and so the juvenile court can hear additional evidence regarding the best interests of the children in order to then reconsider whether to allow the mother to progress in visitation and possibly attend school events and the children's therapy appointments.

V. Conclusion.

We find that placing the children with DHS for foster care was not the least restrictive placement and contrary to the best interests of the children. We further find the juvenile court erred in denying the mother's motion for reasonable efforts to increase visitation and attempt reunification. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.