

IN THE COURT OF APPEALS OF IOWA

No. 2-649 / 12-1062
Filed August 8, 2012

**IN THE INTEREST OF Z.G.,
Minor Child,**

**D.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Warren County, Kevin A. Parker,
District Associate Judge.

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

Nathaniel A. Tagtow of Pargulski, Hauser & Clarke, P.L.C., Des Moines,
for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John Criswell, County Attorney, and Tracie Sehnert, Assistant County
Attorney, for appellee.

Paul White of Juvenile Public Defender's Office, Des Moines, attorney and
guardian ad litem for minor child.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

In this child in need of assistance (CINA) proceeding, a mother appeals the juvenile court's modification order removing her son from her care and placing him in the custody of the Iowa Department of Human Services (DHS) for a placement commensurate with his needs. Upon our review, we affirm.

I. Background Facts and Proceedings.

The mother has a significant history with DHS dating back to 2000, which includes several founded and confirmed child protective assessments for physical abuse and denial of critical care for failure to provide proper supervision. Her son, Z.G. (born December 1998), has been diagnosed with oppositional defiant disorder, attention deficient hyperactivity disorder, and chronic posttraumatic stress disorder, and has a history of extreme behavioral difficulties.

On March 31, 2010, the mother removed Z.G. from the residential treatment facility he had been residing in for the past ten months against medical treatment and advice. About two weeks later, on April 15, 2010, Z.G. had an outburst at school. Z.G. was not following directives in class and was sent to the principal's office. While waiting for the principal, Z.G. found a hammer, broke a window, and used the glass to cut himself. DHS was called, and they obtained a hospitalization order placing Z.G. at Iowa Lutheran Hospital for evaluation. DHS also obtained an ex parte removal order since the mother refused residential or hospitalization services for Z.G. A child protective assessment was later confirmed on the mother for denial of critical care for failure to provide adequate mental health care. A second assessment was also founded for physical abuse

after it was determined the mother left bruises on Z.G.'s arm when she forcefully redirected him at home. The following day, the State filed a petition alleging Z.G. to be a CINA.

On April 21, 2010, Z.G. was transferred from Iowa Lutheran Hospital to the Iowa Juvenile Home in Toledo for a fifteen-day evaluation. The evaluation recommended that Z.G. be placed in a less restrictive facility, like a psychiatric medical institute for children (PMIC). However, because no PMIC facility had any openings, Z.G. was placed into the temporary care of his father.

A contested CINA hearing was held on May 19, 2010. The day after the hearing, the juvenile court entered an order finding Z.G. to be a CINA under Iowa Code sections 232.2(6)(b), (c)(2), and (f) (2009). Placement was continued with the father pending placement in a PMIC facility.

On June 28, 2010, Z.G. had an extreme outburst at his father's home. During the outburst, he became aggressive and threatened violence on himself and others. The police were called, and Z.G. was eventually transported to the Youth Emergency Services and Shelter (YESS) facility. After five days, Z.G. was transferred to Iowa Lutheran Hospital for further evaluation. On July 8, 2010, Z.G. was again placed at the Iowa Juvenile Home in Toledo due to his need for a highly structured residential group care placement.

Throughout his placement in the Iowa Juvenile Home, the mother maintained contact with Z.G. The mother also attended individual counseling and had a psychosocial evaluation completed where she was diagnosed with

narcissistic personality disorder with histrionic personality traits as well as paranoid, dependent, and obsessive compulsive personality features.

By October 2011, Z.G. had progressed to a point where trial home visits with his mother could begin. Z.G. had bi-weekly visits with his mother, and they were noted as going very well. On January 23, 2012, Z.G. was discharged from the Iowa Juvenile Home to his mother's care pending a juvenile court hearing. The hearing occurred on February 10, 2012. Following the hearing, the juvenile court entered a form order stating the following as its findings of fact: "Child is placed at the State Juvenile Home but has completed the program. However, he continues to require structured residential placement as he has needs which cannot be met in the community. Child to remain at State Juvenile Home until a bed is available at a less structured facility." Despite these findings, the juvenile court nonetheless ordered that Z.G. remain in the mother's care. The juvenile court further adopted the case permanency plan and ordered all parties to comply with it. The plan specifically provided:

For this case to successfully and safely close, [Z.G.] must gain control of his unresolved emotional and behavioral issues so he can be maintained in a family home environment. Mental health treatment and stability and consistency provided in the home appear necessary to meet [Z.G.'s] needs. Parents must demonstrate the ability to adequately parent [Z.G.] and meet his needs.

In late-March and early-April 2012, Z.G. regressed in his behaviors at school. He threatened students and personnel, exhibited aggressive behaviors, and was extremely belligerent and openly defiant. On April 3, 2012, Z.G. brought a pocketknife to school, made statements about self-harm, and cut his finger.

When the mother picked Z.G. up from school, she was unable to control him and took him to the Indianola Police Department. The mother did not report anything to DHS or the in-home family safety, risk, and permanency services (FSRP) worker. Instead, the school notified DHS, who immediately had Z.G. placed into the YESS facility pending a removal hearing.

On April 6, 2012, the parties agreed upon a plan to have Z.G. removed from the emergency shelter and returned to his mother's care. The plan included transferring Z.G. to a smaller school district, updating his individualized education plan, increasing his therapy sessions to twice per week, and instituting behavioral health intervention services (BHIS) for the family.

Despite the new plan, Z.G. continued to struggle daily at school. He was still argumentative, defiant, and threatened other students and staff. His extreme behaviors resulted in him being suspended from school on two occasions. The first was for five days. The second occurred on May 17, two days after his return from his first suspension, and required police intervention. This suspension lasted for the remainder of the school year.

During this time, concerns were also raised regarding Z.G.'s behaviors at home with his mother. The BHIS and DHS workers complained that the mother did not keep them honestly informed about Z.G.'s behaviors and was selective in the information that she provided. Both workers also reported that the mother minimized Z.G.'s extreme behaviors, allowed Z.G. to talk down and demean her, and did not use any consequences except taking away Z.G.'s PlayStation. Another concern was that the mother was having her brother or her twenty-year-

old daughter care for Z.G. when she worked the overnight shift, and that Z.G. was allowed to stay up late into the early morning hours.

Following the second suspension, the State applied to have Z.G.'s placement modified from his mother's care to residential treatment. The application came to a contested hearing on May 23, 2012. Following the hearing, the juvenile court determined Z.G. "needs structure and a plan in place." Accordingly, the juvenile court placed Z.G. with DHS for a placement commensurate with the child's needs. Z.G. was immediately transported to the Youth Shelter Care of Central Iowa in Fort Dodge. The mother appeals.

II. Standard of Review.

Our review of an order arising from CINA proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We give weight to factual findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our fundamental concern is the best interests of the child. *Id.* In determining a child's best interests,

we look to the child's long-range as well as immediate interests. Hence we necessarily consider what the future likely holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing.

In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

III. Analysis.

The modification of a dispositional order is provided for in Iowa Code section 232.103. That statute provides in part:

The court may modify or vacate [a dispositional] order for good cause shown provided that where the request to modify or vacate is based on the child's alleged failure to comply with the conditions or terms of the order, the court may modify or vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

Iowa Code § 232.103(5).

We find that implicit within the juvenile court's order placing Z.G. in the mother's care is a minimum expectation that the child refrain from aggressive and threatening behaviors, act in a safe and stable manner, and have an acceptable level of cooperation and integration into his school and community. Upon our review, clear and convincing evidence shows that the child violated these material and reasonable conditions in order to maintain his placement outside of a highly-structured residential or treatment facility. His continued struggles show that he has not gained sufficient insight to control his behaviors and has not internalized his mental health treatment objectives.¹ Given the progress made in this case, we agree with the juvenile court that the child's best interest requires the modification in placement. Accordingly, we find that good cause was shown to modify Z.G.'s placement from his mother's care to residential treatment and affirm the juvenile court's order.

AFFIRMED.

¹ Although the parties focus exclusively on the mother's progress and compliance with case expectations, we believe the applicable statute in this case requires us to focus on the child's progress and best interests. *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) (concluding that in a CINA proceeding to modify a dispositional order, "[p]art of our focus may be on parental change, but the overwhelming bulk of the focus is on the children and their needs").