

IN THE COURT OF APPEALS OF IOWA

No. 2-918 / 12-1341
Filed October 17, 2012

**IN THE INTEREST OF L.W. and N.W.,
Minor Children,**

B.G., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals a juvenile court order modifying previous dispositional
orders. **AFFIRMED.**

Laura A. Kamienski of Ackley, Kopecky & Kingery, L.L.P., Cedar Rapids,
for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee State.

Melody Butz of Butz Law Offices, P.L.C., Cedar Point, for minor children.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

Betsi is the mother of L.W., born in 2004, and N.W., born in 2005. The children were removed from Betsi's care on May 27, 2011, due to concerns she had physically abused them. The parties stipulated the children were in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2011). The dispositional order placed the children in foster care.

Betsi had a trial home placement with the children beginning on December 22, 2011, and continuing until March 22, 2012, when the juvenile court ordered the children would be returned to her care under the protective supervision of the Iowa Department of Human Services.

On May 2, 2012, a service provider discovered Betsi and the children had moved. They were found shortly thereafter in Omaha, Nebraska. Betsi's boyfriend, Christopher, who had a lengthy criminal history, was living with Betsi and the children. There were also concerns Betsi was not cooperating with services in Nebraska. Betsi stated she did not discuss her move with the Department because she felt a request to move would be denied. The children were again removed from her care on July 13, 2012, and placed in foster care. Betsi appealed the modification decision of the juvenile court.

II. Standard of Review.

We review child-in-need-of-assistance proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We review both the facts and the law, and adjudicate rights anew. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). While we are not bound by the factual findings of the juvenile court, we give them weight,

especially when considering the credibility of witnesses. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

III. Removal of Children.

Betsi contends the juvenile court improperly removed the children from her home. She claims the State did not engage in reasonable efforts to alleviate the need to remove them from her care. She asserts that by the time of the modification hearing Christopher was no longer living in her home and she had begun cooperating with service providers in Nebraska.

In order to remove a child from the care of a parent under section 232.102(5)(b), the juvenile court “must make a determination that continuation of the child in the child’s home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made.”

The juvenile court concluded continuation of the children in Betsi’s home would be contrary to their welfare because she had left Iowa without the knowledge and permission of the Department. Furthermore, she permitted Christopher to live with them, and he was not an appropriate person to be around the children due to his lengthy criminal history. Her tolerance of Christopher’s presence in the home must be considered against her, as well as her failure to adequately supervise or protect the children. See *In re V.B.*, 491 N.W.2d 168, 169 (Iowa Ct. App. 1992).

The juvenile court also identified reasonable efforts that had been made to alleviate the need to place the children out of the home. Betsi did not identify what other or different services could have been offered prior to the removal of

the children from the home. See *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999) (noting a parent had the responsibility to challenge or object to services).

We conclude the juvenile court properly determined the children should be removed from Betsi's care.

IV. Ineffective Assistance.

Betsi claims she received ineffective assistance of counsel at the modification hearing. In juvenile court proceedings, in order to show ineffective assistance of counsel a party must show counsel's performance was deficient and actual prejudice resulted. *In re S.D.*, 671 N.W.2d 522, 529 (Iowa Ct. App. 2003). Here, Betsi has not asserted specifically how she believes counsel's performance was deficient, or how she was prejudiced by counsel's performance. We conclude she has failed to show she received ineffective assistance of counsel.

We affirm the decision of the juvenile court.

AFFIRMED.