

IN THE COURT OF APPEALS OF IOWA

No. 23-1877
Filed March 6, 2024

**IN THE INTEREST OF J.B.,
Minor Child,**

**M.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Cheryl Traum, District Associate Judge.

A mother appeals the adjudication and the disposition orders in a child-in-need-of-assistance proceeding concerning her child. **AFFIRMED IN PART, REVERSED IN PART.**

Brian P. Donnelly of Mayer, Lonergan and Rolfes, Clinton, for appellant mother.

Brenna Bird, Attorney General, and Tamara Knight, Assistant Attorney General, for appellee State.

Jean Capdevila, Davenport, attorney and guardian ad litem for minor child.

Considered by Schumacher, P.J., and Badding and Chicchelly, JJ.

SCHUMACHER, Presiding Judge.

A mother appeals the adjudication and disposition orders in a child-in-need-of-assistance (CINA) proceeding. We affirm the adjudication of the child as CINA under Iowa Code section 232.96A(3)(b), (5), (14), (15), and (16) (2023). We reverse the adjudication as to Iowa Code section 232.96A(2). We affirm the disposition order.

I. Background Facts & Proceedings

The child at the heart of this appeal is J.B., who was born in May 2023.¹ A blood test of J.B.'s umbilical cord at the time of birth was positive for methamphetamine and amphetamines; urine tests for the mother and child were negative for illegal substances. The mother was not cooperative with attempts by the Iowa Department of Health and Human Services (HHS) to locate the child after receipt of the umbilical cord test results.²

The child was removed from the mother's custody when he was about three weeks old and placed in foster care. A child protective services child abuse assessment summary completed in June 2023 was founded for dangerous substances and the presence of illegal drugs, with the mother determined as the perpetrator of the abuse and J.B. as the victim.

The mother had prior interaction with HHS for other children who no longer live with the mother. The allegations involving these other children revolved

¹ The mother was evasive about the identity of the father. During the CINA proceedings she named a putative father, but he has not been established as the biological father through DNA testing.

² The mother and newborn J.B. were released from the hospital before the receipt of the umbilical cord test results.

around the mother using and selling methamphetamine in the family home. The mother had a previous founded child protective services child abuse assessment summary in April 2022 for dangerous substances with two of her other children named as the victims.

Following removal, concerns arose about J.B.'s health, including tremors, rigidity, and excessive crying. The foster mother reported that medical providers indicated the child may be experiencing withdrawal symptoms. The mother agreed to wear a sweat patch, which was positive for methamphetamine, cocaine, and amphetamines. The mother's hair test was negative for illegal substances. The mother was inconsistent in attending visits with the child. Although she was asked not to bring family members to meetings or visits, she continued to do so.

The court relied on Iowa Code section 232.96A(2), (3)(b), (5), (14), (15), and (16) in the adjudication order. The court noted the mother's criminal history of drug charges, and that law enforcement was called to the mother's home because of the presence of an unresponsive woman following the removal of the child. The mother had a container of methamphetamine in her pocket. The court found the mother was not credible and she was uncooperative with HHS.

The order of disposition continued placement of J.B. outside of parental custody. Prior to the disposition hearing, the mother was not consistently attending visits, and of those she did attend, she was sometimes late. The mother spent time during the visits on her phone rather than paying attention to the child. The mother did not fully participate in solution based casework services, and she did not participate in the drug testing requested by HHS. And, in spite of the positive

drug tests, the mother denied use of illegal substances. The mother appeals the adjudication and disposition orders.

II. Standard of Review

The district court's decisions in CINA proceedings are reviewed de novo. *In re L.H.*, 904 N.W.2d 145, 149 (Iowa 2017). We are not bound by the factual findings of the court, but we give weight to those findings. *In re J.S.*, 846 N.W.2d 36, 40 (Iowa 2014). The court's "determinations must be based upon clear and convincing evidence." *Id.* at 41. Our primary consideration is the best interests of the children. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997).

III. Sufficiency of the Evidence

A. Adjudication

The mother claims the adjudication is not supported by the evidence. A court may enter a CINA adjudication if the court "concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required." Iowa Code § 232.96(9). "Clear and convincing evidence" exists "when there are no 'serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence.'" *L.H.*, 904 N.W.2d at 149 (citations omitted).

We first address which of the grounds for adjudication the mother has raised in this appeal. We determine the mother's challenge is solely to adjudication on Iowa Code section 232.96A(2).³ As a result, we affirm on the other grounds the court relied on in the adjudication order. But although the mother does not

³ Prior to the enactment of the 2022 legislation, this subsection was identified as 232.2(6)(b).

challenge the CINA determination under the other sections relied on, that does not render the appeal moot. The grounds for a CINA adjudication matter. *See In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App.1995) (“The underlying grounds of adjudication in child in need of assistance cases have important legal implications beyond the adjudication.”).

So we turn to whether clear and convincing evidence supports adjudicating the child under Iowa Code section 232.96A(2), formally section 232.2(6)(b). Under this section, the CINA adjudication requires a determination that a “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 physically abuse or neglect the child.” Iowa Code § 232.96A(2). But “physical abuse or neglect” and “abuse or neglect” are terms of art in this context. Within chapter 232, “physical abuse or neglect” and “abuse or neglect” mean “any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child’s parent, guardian, or custodian or other person legally responsible for the child.” *Id.* § 232.2(48).

Our supreme court has determined that a “physical injury to the child is a prerequisite” to finding *past* physical abuse or neglect. *See In re B.B.*, 440 N.W.2d 594, 597 (Iowa 1989) (observing the definition of neglect under chapter 232 requires a finding of physical injury). And our supreme court has held that general statements about methamphetamine addiction are by themselves not enough to prove that a child is imminently likely to suffer physical harm under section 232.2(6)(b). *J.S.*, 846 N.W.2d at 42.

The phrase “abuse or neglect” in section 232.96A(2) “means ‘physical injury suffered by a child as a result of the acts or omissions of the child’s parent.’” *Id.* at 37 (citation omitted); *accord In re E.C.*, No. 18-1167, 2018 WL 4361182, at *4 (Iowa Ct. App. Sept. 12, 2018) (“[T]he term of art ‘physical abuse or neglect’ requires a nonaccidental injury.” (citation omitted)). In reference to section 232.2(6)(b), our supreme court has stated that “the general characteristics of methamphetamine addiction” are not sufficient to automatically “establish an imminent likelihood of physical harm to [a child].” *J.S.*, 846 N.W.2d at 43-44; *accord In re H.S.*, No. 15-1107, 2015 WL 7075845, at *4 (Iowa Ct. App. Nov. 12, 2015). In *J.S.*, the court noted there was no evidence of “specific prior incidents of abuse or neglect.” 846 N.W.2d at 43. A different result was reached in *L.H.*, where the record showed “clear and convincing evidence of [the father’s] demonstrated history of domestic violence and abuse.” 904 N.W.2d at 152.

The phrase “imminently likely” is liberally interpreted in CINA cases, “so ‘we do not require neglect or physical or sexual abuse to be on the verge of happening before adjudicating a child as one in need of assistance.’” *Id.* at 150 (quoting *J.S.*, 846 N.W.2d at 43). “Child protection statutes ‘are designed to prevent probable harm to the child and do not require delay until after harm has occurred.’” *J.S.*, 846 N.W.2d at 43 (quoting *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990)).

In the adjudicatory order, the district court did not make any findings that the child had been physically abused or neglected or was imminently likely to be physically abused or neglected, and on our de novo review of the evidence, we

have found no support for such finding in the record.⁴ And while the State sets out the applicable law on section 232.96A(2), it does not provide any evidence of “specific prior incidents of abuse or neglect,” nor any evidence to support that the child was imminently likely to suffer from physical abuse or neglect.⁵ See *J.S.*, 846 N.W.2d at 42. The child’s umbilical cord tested positive for methamphetamine and amphetamines. Considering the holding in *J.S.*, and the definition for the adjudication under Iowa Code section 232.96A(15),⁶ we conclude this finding is insufficient for a CINA adjudication under section 232.96A(2). *J.S.*, 846 N.W.2d at 37 (finding the term “abuse or neglect” “means ‘physical injury suffered by a child as a result of the acts or omissions of the child’s parent’”).

B. Disposition

The mother’s argument related to disposition is limited to the following: “At the Dispositional hearing, the mother evidenced on the record a willingness to comply with the requirements of the Department as they related to the execution of certain releases and requested the return of her child.”

⁴ The district court noted in the adjudication order that the child could be experiencing withdrawal symptoms.

⁵ The State does not argue that a potential diagnosis of neonatal abstinence syndrome qualifies as a nonaccidental physical injury. And although the State’s brief references a medical report, such is not contained in our record. We do not decide as part of this opinion whether a diagnosis of neonatal abstinence syndrome, with supporting medical documentation or testimony verifying a diagnosis, would qualify as nonaccidental injury to the child separate from Iowa Code § 232.96A(15).

⁶ *J.B.* was also adjudicated under this code section, which reads: “The child’s body has an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child’s parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.” Iowa Code § 232.96A(15).

We have little difficulty determining that the disposition ordered by the district court is in the child's best interest and the least restrictive alternative to resolve the issues of the family while minimizing the risk of further adjudicatory harm to the child. We also agree with the district court that placement of J.B. in parental custody is contrary to the welfare of the child. The mother has neither acknowledged her issues with illegal substance usage nor taken steps to address the same.

IV. Conclusion

We affirm the CINA adjudication on Iowa Code section 232.96A(3)(b), (5), (14), (15), and (16) and reverse the adjudication on Iowa Code section 232.96A(2). We affirm the dispositional order.

AFFIRMED IN PART, REVERSED IN PART.