

IN THE COURT OF APPEALS OF IOWA

No. 0-023 / 09-1225
Filed February 10, 2010

**IN THE INTEREST OF D.M.-K.,
Minor Child,**

**S.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals the juvenile court's order adjudicating her child as a child in need of assistance. **AFFIRMED.**

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant mother.

Theodore R. Stone, Cedar Falls, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach and Kathleen A. Hahn, Assistant County Attorneys, for appellee State.

Timothy M. Baldwin of Black Hawk Public Defender's Office, Waterloo, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

A mother appeals from the adjudicatory order concerning her child, contending there is not clear and convincing evidence that the child is a child in need of assistance (CINA) as defined by Iowa Code section 232.2(6)(c)(2) and (n) (2009). She also argues that reasonable efforts were not made to her. Upon our review, we affirm.

I. Background Facts and Proceedings.

S.M. is the mother of J.M., born in January 2008, and D.M.-K., born in February 2009.¹ The mother has a history of mental illness and is diagnosed with depression and attention-deficit/hyperactivity disorder (ADHD). She also has a history of substance abuse and criminal activity, including arrests for possession of methamphetamine, prostitution, soliciting, possession of drug paraphernalia, and operating while intoxicated.

J.M. tested positive for cocaine at birth, and the mother tested positive for cocaine shortly after J.M.'s birth. At the time of J.M.'s birth, the mother had an outstanding warrant for her arrest in Iowa and was living in Illinois. Social services in Illinois contacted the mother concerning J.M., and the mother informed social services she was moving back to Iowa to turn herself in on the warrant. Social services allowed J.M. to remain in the mother's care, and the mother and J.M. returned to Iowa.

The mother first became involved with the Iowa Department of Human Services (Department) in July 2008 when the mother voluntarily placed J.M. in

¹ This appeal only concerns D.M.-K. The identity of D.M.-K.'s biological father is unknown.

foster care. About this time, the mother began dating and moved in with a man she had just met, M.K., who has a history of substance abuse and criminal activity. The mother did not have any contact with the Department again until approximately November 2008, after the mother learned that she was pregnant with D.M.-K. The mother stopped taking her mental health medications due to her pregnancy. The mother then became involved in prenatal care through an area hospital, which required the mother to provide samples for urinalysis testing. All of her samples were negative. Additionally, she began participating in family safety risk and permanency services through the Department. The mother obtained a substance abuse evaluation and followed its recommendations. In December 2008, the mother turned herself in on the warrant. She served a short time in jail and was then completely discharged.

In February 2009, D.M.-K. was born. While the mother and D.M.-K. were still in the hospital following D.M.-K.'s delivery, the Department's caseworker filed an application seeking removal of D.M.-K. from the mother's care. The application stated removal was necessary because

[p]ast and current mental health professionals have reported [the mother] lacks insight, has poor judgment, [is] impulsive, and has borderline to normal intellectual functioning. Due to [the mother's] lack of participation, it is difficult to assess her abilities. Her current therapist is recommending long term involvement due to the nature of her illness. She further reports that [the mother's] depression is causing impairment in her behaviors.

This worker believes that [the mother's] inconsistent mental health status places [D.M.-K.] in imminent danger. [The mother] has a long history of mental health concerns and continues to show her lack of follow through with therapy and medication management.

It is unclear if [the mother and the mother's boyfriend] have the intellectual ability to safely care for a child on their own. Their

current actions demonstrate that they lack the ability to meet the basic needs of a child.

The court entered an order temporarily removing D.M.-K. from the mother's care and placing the child in foster care, and the court set the matter for hearing. Thereafter, the State filed its petition asserting D.M.-K. to be a CINA.

A contested hearing concerning the temporary removal order was held at the end of February 2009. The Department's caseworker testified that the mother had participated in a substance abuse evaluation, but testified that the mother's report concerning her past substance abuse was inconsistent. The worker opined that the mother had not been honest in the mother's most recent substance abuse evaluation. The worker acknowledged that the mother's urinalysis samples were negative for substances and that the mother had participated in extended outpatient treatment as recommended, starting in January 2009. The worker testified she was concerned that the mother had twice scheduled her doctor's appointments at the same time as service provider appointments, which had to be rescheduled. The worker also testified that she was concerned at the mother's lack of preparation for the baby, explaining that a service provider had to prompt the mother and the boyfriend to get the basics for the child, such as a bassinet, bottles, clothing, and diapers. The provider testified that the mother only gotten one bottle prior to D.M.-K.'s birth, and that the mother did not have formula for the child. The provider testified that the mother intended to get formula from the WIC program, but was unaware that she needed to apply for such assistance rather than simply receiving the assistance.

The mother testified that she was truthful in her substance abuse evaluation and that the last time she abused substances was in January of 2008. She testified that she participated in extended outpatient programming as requested, but missed a few appointments due to a doctor's appointment or illness. The mother testified that she had not had a mental health appointment since D.M.-K. was born due to the mental health office rescheduling, but had an appointment set. The mother testified that she did have supplies for the baby.

After hearing, the court entered its order continuing D.M.-K.'s temporary removal, finding that reasonable efforts had been made to the mother. The court found that the State offered substantial evidence to believe that continued removal of the child was necessary to avoid imminent risk to the child's life or health, explaining:

The child in interest is less than one month of age. The child's mother has a history of chaotic lifestyle, transient living, substance abuse, and questionable parenting skills. . . . The mother's ability to provide the necessary care for an infant child is seriously questioned by the court based upon the testimony presented, especially the mother's own testimony. The mother has a history of mental illness and failure to follow through with mental health counseling. The mother advised the court that she is currently not taking her mental health medications because of her recent pregnancy. Further, the mother does not appear to acknowledge the importance of prenatal care, mental health counseling, or the responsibilities in caring for children. Recently, the mother has initiated herself in services, mental health counseling, and other community-based parental support groups.

An adjudication hearing was held on May 29, 2009. The mother testified she had been diagnosed with depression and ADHD. The mother testified that although she believed she needed medication to control her ADHD, her family doctor determined a number of years ago she no longer needed medication for

that illness. The mother testified that she had not yet seen her mental health counselor regarding whether she needed to resume medication for her ADHD, but stated she had an upcoming appointment with the counselor. The mother testified she was taking medication for depression. The mother additionally testified she had not abused substances and that she had successfully discharged from outpatient substance abuse treatment on May 6, 2009. The mother testified that she had participated in parenting classes, and that she had complied with each and every requirement the Department had asked her to comply with in the case plan.

A service provider testified that the mother had made progress in her parenting skills; however, the provider still had concerns about whether the mother could safely parent her child. The provider testified that the mother lacked insight to be able to identify the needs of her child and that she had to continually prompt and model proper parenting behaviors for the mother, including reiterating to the mother to make sure she properly supported her child when bathing the child. The provider testified that the mother was often fidgety and unfocused, and it was the provider's opinion that the mother would benefit from prescription medication for the mother's ADHD diagnosis, but the mother had not talked to her doctor about medication despite recommendations to do so. The provider testified that the mother did not reference the notebook shared between the mother and the foster family as to feedings and issues with the children, and the provider testified that the mother was quick to try to feed the children when it was not their regular time for feeding and the mother over

burped D.M.-K. The provider acknowledged that the mother and her boyfriend had obtained a suitable apartment and that it was well furnished.

The Department's caseworker testified she still had concerns regarding the mother's ability to safely parent D.M.-K. The worker testified that she did not know if the mother had been attending AA and NA meetings that were recommended. The worker was concerned that the mother had not seen a doctor regarding her medication for her ADHD since D.M.-K.'s birth, but testified that mother had resumed medication for her depression. The worker testified that the mother had not missed any visits with D.M.-K.

Following the close of evidence, the court entered its ruling on the record, finding D.M.-K. to be a CINA. The court found that it continued to have concerns regarding the mother's limited parenting skills and her ability to meet D.M.-K.'s needs. The court noted that the mother had progressed and it found her to be substance free. The court ordered that IQ testing be done, the mother meet with her mental health counselor concerning medication for her ADHD, and the mother continue to work on her parenting skills. The court then entered its written ruling adjudicating D.M.-K. to be a CINA as defined by Iowa Code sections 232.2(6)(c)(2) and (n) (2009).

Following a dispositional hearing, the juvenile court entered its dispositional order finding that D.M.-K. could not be safely returned to the mother's custody and that the Department had exercised all reasonable efforts to achieve permanency. The court ordered that D.M.-K. remain in family foster care under the supervision of the Department and that the mother continue receiving services.

The mother appeals.² She contends there is not clear and convincing evidence that the child is a child in need of assistance as defined by Iowa Code sections 232.2(6)(c)(2) and (n) (2009). She also argues that reasonable efforts were not made to her.

II. Scope and Standards of Review.

Our review of child in need of assistance proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The best interests of the child are paramount to our decision. *K.N.*, 625 N.W.2d at 733.

III. Discussion.

A. Grounds for Adjudication.

The provisions of Iowa Code chapter 232 are preventative as well as remedial. *Id.* Their goal is to prevent probable harm, and they do not require delay until harm has occurred. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993).

² We note that the mother challenges the juvenile court’s temporary removal of D.M.-K. from her care in February 2009. However, no remedy exists for any error in initial removals. See *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994) (“We cannot go back in time and restore custody based on alleged errors in the initial removal order.”). We therefore do not address this argument.

Moreover, we look to the whole body of a parent's past performance in CINA cases because that performance may be indicative of the quality of the future care that the parent is capable of providing. See *L.L.*, 459 N.W.2d at 493.

The juvenile court found the State proved by clear and convincing evidence that D.M.-K. was a CINA pursuant to section 232.2(6)(c)(2) and (n). Although the court relied on two sections to adjudicate the child in need of assistance, we need only find grounds under one section to affirm the court's ruling. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Under section 232.2(6)(c)(2), we must determine if the child has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent to exercise a reasonable degree of care in supervising the child. See *L.L.*, 459 N.W.2d at 494 (discussing the provisions of Iowa Code chapter 232). Although a close call, we believe the State carried its burden in this case.

We commend the mother's progress in remaining substance free and encourage her continued participation in services so that she and D.M.-K. may be reunited. However, at the time of adjudication, there were still concerns about the mother's ability to safely parent D.M.-K. and the mother's mental health, supported by the Department caseworker's and the service provider's testimony. We find that these very real concerns and the best interests of D.M.-K. justify D.M.-K.'s CINA adjudication. We accordingly affirm the juvenile court's adjudication order.

B. Reasonable Efforts.

The mother also claims reasonable efforts were not made in this case because D.M.-K.'s removal occurred before she was discharged from the hospital. We disagree.

DHS has an obligation to make reasonable efforts to reunite parents with children. Iowa Code § 232.102(7). Here, the mother was offered services in July 2008 when she voluntarily placed J.M. in foster care. The mother did not take advantage of services until November 2008, and she has been receiving extensive services since that time. D.M.-K. was born only three months after the mother began participating in services. She was not taking her mental health medication during that time due to her pregnancy, and there were real concerns regarding whether the mother could safely parent the child, given her unpreparedness for the birth of the child. Despite the receipt of services, the caseworker and service provider testified concerns remained as to whether the mother could safely parent D.M.-K. We find no merit in the mother's reasonable efforts argument and affirm on this issue.

IV. Conclusion.

Because we find clear and convincing evidence supports finding the child a CINA under section 232.2(6)(c)(2) and the juvenile court did not err in finding that reasonable efforts were made, we affirm the court's order adjudicating the child a CINA.

AFFIRMED.