

IN THE COURT OF APPEALS OF IOWA

No. 0-450 / 10-0827
Filed June 30, 2010

**IN THE INTEREST OF N.E. and N.E.,
Minor Children,**

**C.M.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals an order adjudicating her children in need of assistance.

AFFIRMED.

Mark J. Neary, Muscatine, for appellant mother.

Brian Metcalf, Muscatine, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Gary Allison, County Attorney, Dana Christiansen and Korie Shippee, Assistant County Attorneys, for appellee State.

Esther Dean, Muscatine, for grandmother/custodian.

Joan Black, Iowa City, for minor children.

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

VAITHESWARAN, P.J.

A mother appeals an order adjudicating her children in need of assistance. She contends the record lacks clear and convincing evidence to establish that she neglected them.

Several events precipitated the involvement of the Iowa Department of Human Services in this matter. The most recent was a complaint that the family had a methamphetamine manufacturing lab in the basement of their home. A department social worker went to the home. The children's father acknowledged manufacturing methamphetamine in the basement and acknowledged that the methamphetamine lab exploded, injuring his hand. The mother stated she had no knowledge of the lab.

The children were removed and placed with their paternal grandmother. Results of drug testing revealed the mother and the children were drug-free. As a result, the mother was allowed to visit her children on a daily basis.

At an evidentiary hearing on whether the children should be found in need of assistance, the department recommended that the children be returned to their mother. The juvenile court adjudicated them in need of assistance and followed the department's placement recommendation, but only after noting "the mother's reluctance or failure to recognize the danger the father poses to the children."

On appeal, the mother challenges this finding on the ground it lacks evidentiary support. Our review of this issue is de novo. Iowa R. App. P. 6.907.

Iowa Code section 232.2(6)(c)(2) (2009), on which the juvenile court relied, provides that a "[c]hild in need of assistance" is an unmarried child "[w]ho has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he

failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." As the juvenile court noted, section 232.2(6)(c)(2) permits an adjudication for imminent as well as actual harm.

The State proved the existence of imminent harm to the children based on the father's concessions concerning the methamphetamine lab. Although the mother was not involved in the drug-making activities, section 232.2(6)(c)(2) does not require both parents' participation in the harmful acts that are the basis of the adjudication.

In any event, the department also presented evidence that the children remained at risk with their mother. After the methamphetamine lab was discovered, a safety plan was developed which required the mother to keep the father out of the home. Within the same month, the father was discovered in the basement of the home. Although the mother denied knowledge of his presence, a department employee did not credit this denial, stating his "biggest concern would be [the mother's] ability to keep the kids safe and make appropriate decisions, based on [the father's] contact." He expressed a belief that "the safety plan had been violated and [the mother] allowed [the father] to be living at the house despite her agreeing not to."

We recognize this testimony is at odds with the department's recommendation that the children be returned to their mother and is at odds with another employee's opinion that the mother would protect the children. We believe the juvenile court was in a better position than we are to assess these seemingly divergent opinions. See *In re J.A.L.*, 694 N.W.2d 748, 753 (Iowa 2005).

We affirm the juvenile court's adjudication of the children as in need of assistance.

AFFIRMED.