

IN THE COURT OF APPEALS OF IOWA

No. 0-537 / 10-1001
Filed August 25, 2010

**IN THE INTEREST OF L.M.,
Minor Child,**

**A.L.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

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

Christopher A. Kragnes of Kragnes & Associates, P.C., Des Moines, for
appellant mother.

Amanda M. Demichelis of Demichelis Law Firm, P.C., Chariton, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John Sarcone, County Attorney, and Annette Taylor, Assistant County
Attorney, for appellee State.

M. Kathryn Miller, Des Moines, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Amanda appeals the order of the juvenile court adjudicating her daughter, L.M. (born December 2007), a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (n) (2009). Amanda contends the juvenile court erred in finding clear and convincing evidence supported the statutory grounds for adjudication. Upon our de novo review of the record, we affirm.

I. Background Facts and Proceedings.

This case arose from a domestic altercation between Amanda and her mother that occurred in the presence of L.M. on the evening of March 23, 2010. Although both Amanda and her mother have admitted to the altercation and that it occurred in L.M.'s presence, they have provided very divergent accounts of the cause and circumstances surrounding the altercation.

According to Amanda's mother, the altercation began after she went to Amanda's apartment and found Amanda and three other persons smoking methamphetamine while L.M. was in the room. An argument ensued during which Amanda punched her mother in the face, grabbed her mother by the hair, and took her mother to the ground. Once on the ground, Amanda and one of the other guests began kicking and hitting the mother. This led to one of the mother's teeth being knocked out, another tooth being chipped, and several scrapes and bruises. The mother was apparently able to separate from the fight, retrieve her cell phone, and threaten to call the police. At this time, Amanda's mother claims Amanda took L.M. and fled the apartment by jumping from the second floor balcony to the ground.

Amanda herself provided two versions of events. Initially, Amanda claimed that she was in her apartment getting ready for bed when her mother came to the apartment intoxicated and refused to leave. Her mother then lunged at her, and she fought back in self-defense. However, when asked about others being in the apartment, Amanda altered her story and claimed she and two other friends were in the apartment just sitting around talking when her mother arrived intoxicated. Amanda stated that the struggle broke out during attempts to get her mother to leave, and that her mother threatened to kill everyone. Therefore, Amanda picked up L.M. and left the apartment out the back door to stay with a male friend whose last name she does not know.

After the altercation was reported to the police, the Iowa Department of Human Services (DHS) performed a child abuse assessment. During the assessment, Amanda and her mother were provided the opportunity to submit a hair stat drug test, but neither of them appeared. The assessment was later determined to be founded due to the altercation occurring in L.M.'s presence and unaddressed concerns regarding illegal substances.

On March 30, 2010, the State commenced this CINA proceeding. At this time, Amanda agreed to have L.M. placed into the care of Amanda's father and stepmother. She also agreed to undergo drug screens, but missed both of the subsequent appointments.

A contested adjudicatory hearing was held on May 18, 2010. At the hearing, Amanda again altered her version of the domestic altercation. Amanda testified that she was at her apartment with three of her friends when her mother came to the apartment intoxicated. Amanda stated that there was some bad

blood between her mother and one of her friends, and that the altercation occurred between those two. Amanda testified that she was not directly involved in the altercation, but rather “was trying to break it up. I was in the middle of it.” Amanda further testified that the altercation started in her bedroom and that L.M. woke up as her friends helped push her mother towards the door. As her mother was being pushed towards the door, Amanda stated she went and held onto L.M. because her mother had thrown a panda statue causing it to shatter. According to Amanda, her mother threatened that people would return and “shoot up” the apartment. Amanda also testified that her car was vandalized by her mother, and that while Amanda was away, her mother reentered the apartment and “stole everything I own.” Amanda concedes her mother suffered injuries in the altercation at the apartment.¹

Amanda also acknowledged that she has been subjected to domestic violence in the past by L.M.’s father.² As to drug testing, Amanda testified that she attempted to submit to urinalysis, but was unable to do so because she arrived at the testing site at 6:00 p.m., despite the written instruction that she arrive no later than 5:45 p.m. Amanda admitted she had refused to provide a hair stat test.

¹ Amanda also testified she had left L.M. in the care of one of those friends that evening so she could attend a birthday party where she consumed alcohol. She claimed she had returned to the apartment shortly before her mother arrived. Amanda also acknowledged she has had her mother care for L.M. in the past.

² At the time of the adjudicatory hearing, L.M.’s father was in federal prison. He was represented at the hearing and has not appealed.

Following the hearing, the juvenile court refused to allow the State to call any additional witnesses because it had the DHS reports before it.³ It then determined L.M. to be a CINA under Iowa Code sections 232.2(6)(c)(2) and (n), citing domestic violence and substance abuse concerns. In a separate CINA removal order filed with the CINA adjudication order, the juvenile court specifically stated,

There are credible concerns that [Amanda] uses meth. She agreed to cooperate with investigation and testing, but has failed to do so. [Amanda] testified today with many varying explanations. She also gave conflicting explanations during investigation. [Amanda] is not credible in regards to recent incidents.

The juvenile court subsequently entered a dispositional order on June 1, 2010, confirming that the child would remain with Amanda's father and stepmother. Amanda appeals.

II. Standard of Review.

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). While we give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, we are not bound by them. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The State has the burden of proving its CINA petition allegations by clear and convincing evidence. Iowa Code § 232.96(2). "Clear and convincing evidence is evidence that leaves no serious or substantial doubt about the correctness of the conclusion drawn from

³ Although we do not at all question the juvenile court's handling of this proceeding, we believe that in many instances the interests of justice are better served when the State's case is presented through one or more witnesses (other than the parents whose rights are at issue), rather than solely through DHS reports. This allows statements in the reports to be tested through cross-examination while enabling us to give a greater degree of deference to the juvenile court's findings.

it.” *D.D.*, 653 N.W.2d at 361 (internal quotes omitted). Our overriding concern is the best interests of the child. *K.N.*, 625 N.W.2d at 733.

III. Analysis.

Amanda argues the juvenile court erred in finding clear and convincing evidence that L.M. was in need of assistance under sections 232.(6)(c)(2) and (n). We only need to find the adjudication proper under one ground to affirm. See *In re D.T.*, 435 N.W.2d 323, 331 (Iowa 1989). We find adjudication to be proper under section 232.2(6)(c)(2).

To prove a child is in need of assistance under section 232.2(6)(c)(2), the State must prove the child 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.”

Concerns of domestic violence and drug usage within a home are clear areas of concern for the safety and well-being of a child. *State v. Petithory*, 702 N.W.2d 854, 858-59 (Iowa 2005). Upon our review, we agree with the juvenile court’s assessment of this case, which we quoted above. There is no doubt that a disturbing incident occurred at Amanda’s apartment when L.M. was present on March 23. Amanda’s mother claimed Amanda had been using methamphetamine in L.M.’s presence, and while Amanda vigorously denied the allegation, she refused to submit to drug testing. The juvenile court, which had the opportunity to hear and see Amanda testify, found her “not credible.” Even if Amanda’s last of her three versions of events is accepted as true, it still shows that she has been exposing L.M. to a chaotic lifestyle. We do not need to wait for harm to L.M. to occur. See *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990) (noting

the provisions of Iowa Code chapter 232 are preventive as well as remedial, and that they are designed to prevent probable harm). The domestic violence and ongoing unaddressed concerns for drug usage justify L.M.'s adjudication as a child in need of assistance.

IV. Conclusion.

We conclude the juvenile court properly adjudicated L.M. as a CINA and affirm the juvenile court's order.

AFFIRMED.