

IN THE COURT OF APPEALS OF IOWA

No. 0-538 / 10-1002
Filed August 25, 2010

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

**A.M.M., Mother,
Appellant,**

**A.N.M., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother and father object to the jurisdiction of the juvenile court in this child in need of assistance proceeding. **AFFIRMED.**

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

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant father.

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

Michelle Saveraid of the Youth Law Center, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

A.J.M. was born in August 2009 to Angela and her present husband, Andre. Angela has six other children (four biological and two adopted who were her brother's children). In October 2008, Angela's children ranged from age six to fifteen. Angela, Andre, and the six children came to the attention of the Iowa Department of Human Services (DHS) in October 2008 after an incident of domestic violence in which all the children were present, Andre and Angela assaulted each other, Andre assaulted Angela's fourteen-year-old son and fifteen-year-old daughter, and Angela assaulted her twelve-year-old daughter, resulting in injuries to the children. Andre and Angela failed to abide by a safety plan developed by DHS that called for Andre not to be allowed in the house while the children were there, and the children were voluntarily removed from Angela's custody. The six children were adjudicated children in need of assistance (CINA) in February 2009. They are in the custody of their biological or adoptive fathers.

During the CINA proceedings, the children reported that Angela improperly medicated them.¹ Angela's children also reported numerous physical altercations had occurred between Andre and Angela. In November 2008, after the children were removed, Andre and Angela were involved in a domestic dispute. Angela denied any abuse by Andre and minimized the October 2008 incident.

The previous case plan called for Angela to obtain a psychological evaluation and follow all recommendations, attend therapy, attend anger

¹ As examples, Angela gave one child another child's Ritalin. She also gave the children Zoloft, which was prescribed for Angela. Two of the children's fathers reported Angela would put her Zoloft in the children's food.

management courses, take parenting classes, and participate with Family Safety, Risk, and Permanency (FSRP) and DHS services and follow all recommendations. Andre was to attend individual therapy and follow all recommendations, attend anger management courses, take parenting classes, and participate with FSRP and DHS services. Angela and Andre were to attend couple's therapy.

A July 22, 2009 case progress report indicates Angela continued to deny she or the children were abused by Andre. The report also notes that Angela was continuing to have supervised visits with three of her children (the other three stating they did not want to see her); she had completed a parenting class, continued to attend therapy, and had started an anger management class. The report stated, "Angela is pregnant and is due in August."

The July 22, 2009 DHS case plan contains the following notation:

This worker had a phone conversation with [Angela] regarding her relationship with her husband [Andre]. [Angela] stated that she is concerned that his lack of follow through is going to hinder her relationship with her children. [Angela] reported that [Andre] had stopped going to therapy, and that he stopped going to anger management class. [Angela] said that she was thinking about getting a no-contact order or asking him to leave the house because she felt like he was not being supportive of getting her children back. Apparently [Angela] did ask [Andre] to leave, but he refuses. [Angela] made it clear that even though she wants him to leave, it doesn't mean she is going to divorce him.

.....

It is this worker's understanding that [Angela] went to the court house attempting to place [Andre] in the hospital on Friday July 24, 2009. [Andre] became upset and caused a scene. Andre was placed in custody for interference [and placed in jail until July 29]. [Angela] did obtain a protective order. [Angela] goes back and forth regarding what she wants out of her relationship with [Andre]. This worker is not clear if [Angela] would be protective of her children if they were returned home today.

This relationship is very disturbing. [Angela's] relationship with [Andre] is one of the reasons the children do not wish to live in their mother's home. . . .

Angela and Andre's baby is due any day now. This worker will be approaching the court to remove this baby since [Andre] continues to display his violent behavior and he has not followed through with any of my recommendations. Even though [Angela] has placed a protective order on [Andre], it is unclear where their relationship stands and how protective [Angela] would be.

Before the child's birth, Angela and Andre left Iowa and went to Montana.

Angela gave birth to A.J.M. in August.

A few months later on December 8, 2009, Angela attended a permanency hearing in the CINA proceedings concerning her other children. She was asked where her baby was, and she refused to reveal the child's location, though she did say A.J.M. was with her sister-in-law in Iowa. She did not have a last name for this person or know her telephone number. The juvenile court found her in contempt and ordered her jailed until A.J.M.'s location was revealed. That same date, the State filed a CINA petition with respect to A.J.M. and an application for order of temporary removal of A.J.M. The court ordered the temporary removal and set the matter for hearing on December 11, 2009.

Three days later on December 11, 2009, the court confirmed its removal order of A.J.M. The court took judicial notice of A.J.M.'s siblings' files. The court found the "mother's testimony is contradictory, self-serving, evasive, and wholly lacking in credibility." The court noted the "mother has some concern about her husband not drinking if he has the baby." The court found the "child is unsafe[.] [H]er mother does not know her whereabouts and has left her in the custody of persons she could not contact and whose name she does not know." The court also continued the contempt order, noting the "mother may purge the contempt

by providing [A.J.M.]’s location and I will order her released from jail when that location is verified.” An adjudicatory hearing was scheduled for January 11, 2010.

Andre was served with the order for adjudicatory hearing, the CINA petition, the removal order, and other documents in Whitehall, Montana, on December 18, 2009.

On December 23, 2009, Angela was released from jail after the court entered an order, which provides in part:

The court is now informed that the child in interest is in the custody of the Department of Human Service’s equivalent in the State of Montana. That being the case the mother is no longer in contempt and should be released from custody.

Andre moved for and was granted court-appointed counsel. The adjudicatory hearing was held on January 11 and February 19, 2010. Both Angela and Andre moved for dismissal, contending the court lacked subject matter and personal jurisdiction. The court denied the motions to dismiss in its adjudicatory order. In an order dated April 16, 2010, the court clarified its reasons for the denial:

The court concludes both parents move out of state and resided out of state to avoid the jurisdiction of this court. Such efforts are made clear by the parents actions in December 2009 when the Mother came back to court re her other six children and refused to cooperate with regards to [A.J.M.]’s whereabouts.

The court found A.J.M. to be CINA under Iowa Code section 232.2(6)(c)(2) (2009) (failure of the child’s parents to exercise a reasonable degree of care in supervising the child). The court noted the couple’s history of domestic abuse was the instigating factor of the siblings’ CINA files; the criminal

charge against Andre in July 2009 as a consequence of a violent episode between him and Angela; and despite that episode and filing a petition seeking relief from domestic abuse, approximately ten days later, Angela quit participating in services and left the state with Andre. The court further noted that additional domestic violence occurred in Montana. The court found that Angela “continues to have this volatile relationship with [Andre], while not addressing her own mental health concerns.” The court concluded that if left in the custody of Angela or Andre, A.J.M. was imminently likely to suffer harmful effects as a result of the parents’ failure to exercise a reasonable degree of care.

Both parents appeal. They argue the court lacked jurisdiction to adjudicate A.J.M. a child in need of assistance. In the alternative, they argue clear and convincing evidence does not support the adjudication. The father further asserts the child should have been returned to him.

The parents attempt to frame the story of their involvement with DHS as beginning in December 2009 with DHS’s unjustifiable removal of A.J.M. from Andre in Montana. It is only from this viewpoint that their claims of lack of jurisdiction could have any merit. But the story did not begin there as noted above.

The court had subject matter jurisdiction. Iowa Code § 232.61(1). (“The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.”). In December 2009, Angela was before the court with respect to her other six children and refused to disclose the location of her infant, A.J.M., stating she did not know the name of the person with whom she had left her child or how to contact that

person, but she acknowledged that A.J.M. was in Iowa. See *id.* § 598B.204 (granting “temporary emergency jurisdiction if the child is present in this state and . . . it is necessary in an emergency to protect the child”). Under the particular facts of this case, we conclude the untreated domestic abuse issues in the open and pending sibling cases support both jurisdiction and the finding that A.J.M. was a child in need of assistance, notwithstanding the parents’ intentional attempts to avoid both the court’s jurisdiction and compliance with the recommended services. We affirm.

AFFIRMED.