

IN THE COURT OF APPEALS OF IOWA

No. 1-1010 / 11-1760
Filed February 1, 2012

**IN THE INTEREST OF A.O. and T.O.,
Minor Children,**

**B.J.O., Mother,
Appellant.**

Appeal from the Iowa District Court for Ringgold County, Monty Franklin,
District Associate Judge.

A mother appeals from the juvenile court's dispositional order in a child-in-need-of-assistance proceeding. **AFFIRMED.**

Leanne M. Striegel-Baker of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Clint Spurrier, County Attorney, for appellee.

Jane Orlanes, Des Moines, for father.

Patrick Greenwood, Lamoni, attorney and guardian ad litem for minor
children.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

TABOR, J.

A mother appeals from the juvenile court's dispositional order in a child-in-need-of-assistance (CINA) proceeding. She argues the State failed to make reasonable efforts to reunite her with her son, T.O., and her daughter, A.O. She also contends the State did not meet its burden to establish the children are in need of assistance.

Because clear and convincing evidence shows the children were likely to suffer imminent harm due to their parents' failure to exercise a reasonable degree of supervision, we affirm the CINA adjudication pursuant to section 232.116(1)(c)(2) (2011).¹ The mother did not preserve her argument concerning reasonable efforts and, therefore, we will not consider it on appeal.

I. Backgrounds Facts and Proceedings.

Eleven-year-old T.O. and five-year-old A.O. have a long history of involvement with the Department of Human Services (DHS), being the subjects of founded child abuse assessments for denial of critical care dating back to 2006. They have twice previously been the subject of juvenile court proceedings. The State initiated the current proceedings after the DHS received information that the children were living in the home of a registered sex offender in February 2011.

The most recent report is not the first occasion concerns were raised about the children's exposure to a sex offender. Although the mother, Billie Jo, and father, William, are married, they live separately and Billie Jo has been

¹ The father does not appeal.

romantically involved with Harvey for several years. In 1996, Harvey was convicted of sexually abusing his thirteen-year-old stepdaughter.² Billie Jo's relationship with Harvey—and the children's resulting exposure to him—resulted in the DHS initiating CINA proceedings in July 2008. In numerous orders in 2008, 2009, and 2010, the juvenile court instructed the parents to prevent the children from having contact with Harvey. In 2010, the court determined that the parents had received maximum benefits from services.

The children were residing with their father in February 2011 when the water pipes in his home froze. Rather than taking the children to stay with the children's aunt or the father's great aunt, the father and children stayed with the mother at Harvey's home. On April 1, 2011, the State filed a CINA petition, alleging (1) the children had suffered or were imminently likely to suffer injury due to the parents' failure to exercise a reasonable degree of supervision, see Iowa Code section 232.2(6)(c); (2) the children had been or were imminently likely to be sexually abused by a member of the household in which they resided, see section 232.2(6)(d); and (3) the parents failed to exercise a minimal degree of care in supplying the children with adequate food, clothing, or shelter, see section 232.2(6)(g).

The court held CINA hearings in May and June of 2011. At the hearings, the parents claimed for the first time the children never had unsupervised contact with Harvey. Citing the mother's insomnia, they alleged that one of them was awake and supervising the children at all times while at Harvey's home.

² He also has convictions for burglary and failing to register as a sex offender.

In its August 12, 2011 order, the juvenile court found the parents' evidence was not credible and was inconsistent with T.O.'s report to the DHS investigator. T.O. told the investigator the children weren't supposed to reveal that they were living under the same roof as Harvey. While the mother claimed the children had been staying at Harvey's residence for only three to four days, T.O. reported they had been there for two weeks, a fact confirmed by the father's great aunt who lived next door. The juvenile court adjudicated the children to be in need of assistance and placed them in the temporary custody of their aunt.

The court held a dispositional hearing on October 17, 2011. At the hearing, the court asked about the sufficiency of the services being provided to reunite the parents with their children and whether additional services were necessary; neither parent requested additional services. In its dispositional order, the juvenile court confirmed the children's CINA adjudication and continued their custody with the aunt, under the supervision of the DHS. The mother appeals.

II. Scope and Standard of Review.

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). "We review 'both the facts and the law, and we adjudicate rights anew.'" *Id.* (citation omitted). We give weight to the juvenile court's findings of fact, but are not bound by them. *Id.* As in all juvenile proceedings, our fundamental concern is the children's best interests. *Id.*

III. Analysis.

The mother first contends the State failed to make reasonable efforts to reunify her with the children. She alleges that between February 2011 and the adjudicatory hearing, the only services she and the father received were supervised visitation and family team meetings. The mother claims the DHS should have increased the visitation she received with the children.

It is incumbent upon the DHS to make reasonable efforts toward reunifying the parent and child. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa 2005). However, the parent has an equal obligation to demand other, different, or additional services before a permanency or termination hearing. *Id.* The mother does not cite where in the record she requested other, different, or additional services. Without any request for additional visitation, the mother failed to preserve this claim for our review.

Billie Jo also contends the State failed to prove the grounds for the CINA adjudication by clear and convincing evidence. The juvenile court found clear and convincing evidence supported the CINA adjudication on all three grounds alleged by the State. We affirm if one ground, properly urged, exists to support the decision. *In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App. 1995).

Children may be adjudicated in need of assistance pursuant to section 232.2(6)(c)(2) where there is clear and convincing evidence they have suffered or are imminently likely to suffer harmful effects as a result of the failure of their parents to exercise a reasonable degree of care in supervising them. We conclude the evidence is sufficient to find A.O. and T.O. in need of assistance

under this provision. The parents allowed the children to have contact with a registered sex offender over a two-week period while they all lived in the sex offender's home. This proximity to a sex offender placed the children at imminent risk of harm. See generally *State v. Mitchell*, 757 N.W.2d 431, 438 (Iowa 2008) (finding legislature could reasonably conclude that unmarried cohabitation of a parent with a sex offender posed a danger to the children). The parents chose this arrangement over the safer option of moving the children in with approved relatives.

Billie Jo challenges the finding that she and the father allowed the children to have unsupervised contact with Harvey. She cites the testimony at the CINA hearing that she and the father slept in shifts to supervise the children at all times. The district court did not believe this claim largely because it first surfaced at the CINA hearing. The court also questioned the parents' truthfulness by noting T.O. provided different versions of how long they had lived with Harvey and regarding the sleeping arrangements in his home. The mother criticizes the juvenile court for finding T.O. to be the more credible witness when he "has a history of lying." However, T.O.'s claim about the length of time they lived at Harvey's home was corroborated by the father's great aunt who lived next door and testified they were in the home for approximately two weeks.

Upon our de novo review of the evidence, we conclude it is sufficient to adjudicate T.O. and A.O. to be CINA pursuant to section 232.2(6)(c)(2). We are not required to consider whether the CINA adjudication was appropriate under the two remaining grounds. We further find the mother failed to preserve error on

her claim the State failed to make reasonable efforts to reunify her with the children because she failed to request additional services before the adjudicatory hearing. Finding no error in the juvenile court's CINA adjudication or its dispositional order, we affirm.

AFFIRMED.