

IN THE COURT OF APPEALS OF IOWA

No. 2-484 / 12-0809
Filed June 27, 2012

**IN THE INTEREST OF C.P.,
Minor Child,**

**A.J.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

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

Cynthia S. Finley, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Lance Heeren, Assistant
County Attorney, for appellee State.

Julie Trachta of Linn County Advocate, Inc., Cedar Rapids, attorney and
guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

A mother appeals the district court's order adjudicating her child in need of assistance. Because the district court properly adjudicated C.P., and the adjudication and disposition were in C.P.'s best interests, we affirm.

I. Background Facts and Proceedings

Crucial to the background of this case is that in March 2010, Kamryn, the eighteen-month-old daughter of Amy's paramour, Zyriah, died after suffering head injuries while in the sole custody, care, and control of Amy and Zyriah.¹

Following the child's death, Amy's two oldest children, then ages six and two, were adjudicated children in need of assistance.² Amy's third child, C.P., who is the subject of these proceedings, was born in December 2011. On January 3, 2012, C.P. was removed from Amy's care and placed in the care of Amy's mother. All contact between Amy and C.P. was to be supervised by Amy's mother. Amy waived hearing regarding the temporary removal and stipulated to continued out-of-home placement pending further hearing.

On April 20, 2012, the district court adjudicated C.P. a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) (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) and

¹ Amy and Zyriah were each charged with murder in the first degree in violation of Iowa Code sections 707.2(2) and 707.2(5) (2009) and child endangerment resulting in death in violation of Iowa Code section 726.6(1)(a), (b), (d), or (e) and Iowa Code section 726.6(4). Trial was scheduled to commence on May 29, 2012; however, as of the filing date of this decision, the trial had been rescheduled to commence on September 17, 2012.

² Amy's oldest child, born in 2004, was placed in the custody and guardianship of his maternal grandfather. The other child, born in 2007, was placed in the custody of his father.

232.2(6)(b) (parent is imminently likely to abuse or neglect the child) (2011). Amy appeals.³

II. Standard of Review

Our review of child-in-need-of-assistance (CINA) proceedings is de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). In CINA proceedings, our paramount concern is the welfare and best interests of the child. *In re D.R.R.*, 498 N.W.2d 920, 922 (Iowa Ct. App. 1993). Although we are not bound by the district court's factual findings, we give them weight because the district court "has had the unique opportunity to hear and observe the witnesses firsthand." *In re C.M.*, 526 N.W.2d 562, 565 (Iowa Ct. App. 1994).

III. Analysis

Amy contends the State failed to prove by clear and convincing evidence that C.P. was a child in need of assistance and that the adjudication was not in C.P.'s best interest. The crux of Amy's argument focuses on Amy's presentation of opinion testimony by three service providers who had no concerns regarding Amy's interaction with C.P. and believed that C.P. was not in imminent harm or danger while in Amy's care. The State argues, however, that cross-examination "highlighted significant flaws in the providers' thinking."

The district court expressed its concern with the service providers' testimony, stating,

Although service providers . . . each testified that they saw no need for C.P. to be adjudicated to be a child in need of assistance, their testimony was shocking in its dismissal of the significance of the

³ At the time of the CINA hearing, there were at least two putative fathers. None of them appeal.

death of Kamryn while in Amy's care as part of their evaluation of C.P.'s safety in his mother's care.

On our review of the evidence, we agree with the district court that service providers seriously underestimated the risk posed to C.P. if he were to be returned to Amy's care. The district court aptly concluded:

This court has previously concluded that Amy, along with Zyriah, was responsible for Kamryn's death. Amy has chosen not to address this issue through the services available in [her older children's] cases due to the criminal charges pending and she has continued with that position in C.P.'s case. Kamryn's death while in the care of Amy causes the Court to conclude that the risk of harm to C.P. in his mother's care continues to be an imminent risk of physical harm and that he cannot be safely returned to her sole care at this time.

Because our paramount concern is the best interests of C.P., we agree with the district court that clear and convincing evidence demonstrates that C.P. is a child in need of assistance under Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(b). Further, in assessing the best interests of the child, we look to the child's long-range and immediate interests. *In re L.B.*, 530 N.W.2d 465, 467 (Iowa 1995). The district court's order for continued placement of C.P. with his maternal grandmother, coupled with the visitation plan that allows Amy significant contact with C.P. in a safe environment, is in C.P.'s immediate best interests as it assures his continued safety. Placement with the maternal grandmother is also in C.P.'s long-term best interests as he continues to have contact with Amy in a supervised environment, so as to maintain the present relationship with Amy and preserve any future relationship with her as well.

Because the district court properly adjudicated C.P. as a child in need of assistance and this adjudication was in C.P.'s best interests, we affirm.

AFFIRMED.