

IN THE COURT OF APPEALS OF IOWA

No. 2-729 / 12-1229
Filed August 22, 2012

**IN THE INTEREST OF S.A.,
Minor Child,**

C.A., Father,
Appellant,

R.G., Mother,
Appellant.

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

A father and mother appeal separately from the adjudicatory and dispositional orders concerning their child. **AFFIRMED ON BOTH APPEALS.**

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant father.

Joan Black, Iowa City, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Alan Ostergren, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee State.

Nathan Tucker, Davenport, for minor child.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

A mother and father appeal separately from the adjudicatory and dispositional orders concerning their child. The mother contends the court erred in finding the child had suffered or was imminently likely to suffer harm from a lack of supervision and in basing its decision on evidence concerning a sibling, not this child. The father contends the court erred in finding the child in need of assistance and in ordering the father to participate in services. On de novo review, *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002), we affirm on both appeals.

Background Facts and Proceedings

The child, born in 2007, has an older sibling, born in 2005. Since this case began, the parents have not lived together. The mother was the primary caretaker, but the father visited with the children. The family was involved with voluntary services in 2006 and 2007 because of the older sibling's extraordinary weight. The parents refused to continue with voluntary services. In late 2008 the Iowa Department of Human Services (DHS) investigated allegations the older child was not properly supervised. The investigation resulted in a founded child abuse report for failure to provide adequate health care; the parents were not following the medically-prescribed diet for the older sibling, who weighed 117 pounds at age four. Voluntary services were inadequate; consequently, the older child was adjudicated in need of assistance in July 2009 under Iowa Code section 232.2(6)(c)(2) (2009) (lack of proper supervision) and 232.2(6)(e) (lack of proper medical treatment). The older child weighed 136 pounds before age five and a half. The older child was placed in foster care in April 2011.

Following allegations the mother's boyfriend sexually abused the older child, the State petitioned to have the younger child adjudicated in need of assistance under section 232.2(6)(c)(2) (2011). The affidavit in support of the petition and most of the evidence received during the February 2012 hearing on the petition related to keeping this child safe from the mother's boyfriend. A service provider also testified this child had gained a significant amount of weight in the months preceding the hearing. Because the parents had not followed the medically-prescribed diet for the older child, there was concern this child was at risk if the court did not get involved. A social worker testified no additional services would be provided for the family if the younger child were adjudicated, but she said "I just think we would certainly talk to the parents a lot more about the reason that [the younger child] is adjudicated so that would be included in more of the parenting sessions." She further testified there would be no services for the family if the older child's case closed.

The court adjudicated this child in need of assistance under section 232.2(6)(c)(2), finding the child "is imminently likely to suffer harmful effects as a result of the failure of the child's mother to exercise a reasonable degree of care in supervising the child." The court found the mother "has extremely poor judgment, failed to recognize danger to her children, and failed to disclose when one of her children was sexually abused." The court declined to remove the child from the mother's home because the child is bonded to the mother, but noted, "it is a close decision."

In May the court held a disposition hearing. The mother agreed with the proposed disposition; however, the father objected. The social worker testified

the current concerns were the child's safety and "how [the child] has appeared to gain a great amount of weight," to the point of being considered obese. When asked about the parents' progress, the social worker testified:

It would be very minimal progress. We are working with the family because of [the older child's] weight also, and so we're asking the parents to use the same skills we have taught them to use with [the older child] and to use those same skills with [this child].

When asked if the parents took the concerns seriously, she responded:

I wouldn't say very seriously. They still continue to have candy out in the home, and the kids have eaten that during visits very recently even. They continue to give incorrect proportions of food to the children, so I would say no, they are still not very serious about it.

The father's attorney asked the social worker why the father should have to participate in services since the concerns raised mostly related to events in the mother's home. She replied:

Even if this case was not court involved, we would ask both parents to work on the same skills with the child so that the child was getting all their needs met equally in both homes. And so because we are court involved, I think that both parents should participate in parenting skills.

The social worker expressed some concerns with how the father feeds, exercises, and addresses the dietary issues with the younger child based on her observations of the father with the older child.

The court found the child continued to be in need of assistance and continued the child in the parents' custody, with the mother being the primary caretaker. It also approved and adopted the DHS case plan and ordered the parents to comply with the plan. Both parents appeal.

Mother

The mother's two stated issues both amount to a claim the statutory ground for adjudication, lack of supervision, is not supported by clear and convincing evidence because the evidence presented related to the older sibling.

We find clear and convincing evidence the younger child has suffered and is imminently likely to continue to suffer harmful effects as a result of the mother's failure to exercise a reasonable degree of care in supervising the child. She allowed her boyfriend to abuse the older child, and there is some evidence he also abused the younger child. Instead of protecting her children, the mother denied the abuse. The mother also does not properly supervise the child's diet, so the child was gaining weight rapidly around the time of the adjudication and, like the older sibling, was obese. We affirm the adjudication under Iowa Code section 232.2(6)(c)(2).

Father

Like the mother, the father claims the adjudication was based only on circumstances related to his older child. We already have found clear and convincing evidence supports adjudicating this child in need of assistance. We affirm on this claim.

The father contends the court erred in ordering him to participate in services related to the child's weight. This is a closer issue. The evidence of the mother's actions and inaction concerning both children is clear, as is the evidence of the past harm both suffered and the present threat to the younger child. From our review of the record, we find the father has been quicker to recognize the imminent danger to the younger child from the weight gain. The

father did not act to prevent harm to the older child from her obesity. The younger child is following the same path despite the father's protestations he can provide proper diet and exercise for this child. The case history reveals the parents stopped participating in voluntary services. There is evidence the social worker is concerned the parents would not participate in services without court involvement. We affirm the court's dispositional order for the father to participate in parenting sessions to learn about meeting the younger child's dietary needs, exercise, discipline, and maintaining a safe environment.

AFFIRMED ON BOTH APPEALS.