

IN THE COURT OF APPEALS OF IOWA

No. 2-883 / 12-1303
Filed November 15, 2012

**IN INTEREST OF A.K.,
Minor Child,**

**E.K., Mother,
Appellant.**

Appeal from the Iowa District Court for Howard County, Alan B. Allbee,
Associate Juvenile Judge.

A mother appeals from a dispositional order affirming her child to be in
need of assistance and transferring custody to the father. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Alex Koenigs, County Attorney, for appellee.

Andrew Nelson, Decora, for father.

Thais Folta, Cresco, attorney and guardian ad litem for minor child.

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

MULLINS, J.

A mother appeals from a dispositional order affirming her child, A.K., to be in need of assistance (CINA) and placing the child in the legal custody of the child's father. The mother argues the State presented insufficient evidence to adjudicate A.K. CINA pursuant to Iowa Code section 232.2(6)(c)(2) and (n) (2011). She also alleges the juvenile court erred in placing A.K. in the father's custody asserting the underlying adjudication was erroneous. We affirm.

I. Background Facts and Proceedings

The mother has one child, A.K. (born 2006). The mother was seventeen years old at the time of A.K.'s birth. Two days after A.K. was born, the mother left A.K. in the care of A.K.'s maternal grandparents (grandparents). Prior to these proceedings, A.K.'s grandparents were A.K.'s primary caretakers. A.K.'s mother and father exercised visitation on alternating weekends. The mother also spent time with A.K. during the week at the grandparents' home.

In 2010, the mother and A.K. moved to Minnesota. The mother secured a job as a child care provider. Her employment lasted three months. During this time A.K. lived with the mother for seven to ten days before the mother returned A.K. to the grandparents' care. The mother subsequently moved back into the grandparents' home where she maintained a room throughout the pendency of these proceedings. In addition to the grandparents' home, the mother frequently stayed with her boyfriend in Spring Grove, Minnesota. The mother reported the boyfriend physically abused her on at least two occasions, once while he was under the influence of marijuana.

This case first came to the Department of Human Services (DHS)'s attention on March 3, 2012. At that time the mother was not staying at the grandparents' home and was scheduled to pick up A.K. from the grandparents' home on March 2, 2012. She never arrived. The next day the grandparents learned the mother had been admitted to the emergency room in Decorah for chest pain and shortness of breath. The mother tested positive for methamphetamine, amphetamine, marijuana, and tramadol (a prescription pain medication). A.K.'s hair stat test was negative for the presence of any drug.

On April 24, the juvenile court held an adjudicatory hearing to determine whether A.K. was in need of assistance pursuant to Iowa Code section 232.96 (2011). During the hearing Dr. Walker, from Medtox laboratory in St. Paul, Minnesota, confirmed the mother had tested positive for methamphetamine, amphetamine, marijuana, and tramadol. The juvenile court found

The methamphetamine use by the child's mother does not appear to be isolated. Immediately prior to her hospitalization and the missed weekend contact with [A.K.], the child's mother had used methamphetamine for an entire week. This produces an altered mental state of high followed by a crash, which is more pronounced with increased use. A parent actively using methamphetamine is unable to effectively parent and supervise a young child. Such is true whether the child is directly exposed to the drug or not.

The juvenile court adjudicated the child a child in need of assistance under section 232.2(6)(c)(2) and (n).

II. Standard of Review

We review CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). As in all juvenile proceedings, our paramount concern is the best interests of the child. *In re D.R.R.*, 498 N.W.2d 920, 922 (Iowa Ct. App. 1993).

We give deference to the juvenile court's factual findings, especially the determinations about the credibility of witnesses, although we are not bound by them. *In re C.M.*, 526 N.W.2d 562, 565 (Iowa Ct. App. 1994).

III. Analysis

A. Statutory Grounds for Adjudication

The mother contends the State failed to prove by clear and convincing evidence that A.K. was in need of assistance. The State must present evidence sufficient to prove the allegation of the CINA petition by clear and convincing evidence. Iowa Code § 232.96(2). The State meets its burden in proving an allegation when it presents evidence that leaves "no serious or substantial doubt as to the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We need only find the adjudication proper under one ground to affirm. See *In re D.T.*, 435 N.W.2d 323, 331 (Iowa 1989).

A.K. was adjudicated CINA pursuant to section 232.2(6)(c)(2) and (n). Section 232.2(6)(c)(2) provides, in relevant part, a child is in need of assistance when the child

has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

The mother contends section 232.2(6)(c)(2) does not apply to her because A.K. resided with the grandparents and the mother did not reside with the grandparents. The grandmother testified both A.K. and the mother live with her. A DHS case worker testified the mother used the grandmother's address as her own address. Although the mother attempted to move out of the grandparents'

home several times, most recently in 2010, she always moved back in with the grandparents. The mother and grandmother reported to a DHS case worker that the mother had a room in the grandmother's basement and lived in the grandmother's home when the mother was not staying with her boyfriend in Minnesota. The mother's plan to move to Minnesota with A.K. after the 2012 school year supports the inference the mother lived with the grandparents. Notwithstanding the mother's periodic absences from the grandparents' home, we find by clear and convincing evidence the mother was a member of the household in which A.K. resided.

The mother argues there is no evidence of ongoing methamphetamine use, she never exposed A.K. to methamphetamine use, and A.K. tested negative for the drug. The mother was hospitalized and tested positive for methamphetamine, amphetamine, marijuana, and tramadol use at a time she was supposed to be providing care for A.K. The mother told hospital staff she used methamphetamine the previous night. She also indicated she had used methamphetamine "once every 2 to 3 weeks for a while and smokes marijuana occasionally." The mother later told a DHS worker she used methamphetamine for the first and only time the entire week (February 27 through March 2, 2012) leading up to her hospitalization. The mother subsequently told the same DHS worker, however, she had used methamphetamine three months before. She then admitted to have a friend who manufactures methamphetamine and indicated that she snorts methamphetamine.

Contrary to the mother's assertions, the juvenile court found that "[t]he methamphetamine use by the child's mother does not appear to be isolated. . . . A parent actively using methamphetamine is unable to effectively parent and supervise a young child." We give deference to the juvenile court's finding that the mother's drug use is ongoing. *C.M.*, 526 N.W.2d at 565. We decline to wait for harm to befall the child before taking action in this case. Iowa Code § 232.2(6)(c)(2) (stating a child is in need of assistance if the child "has suffered or is imminently likely to suffer harmful effects"); *State v. Petithory*, 702 N.W.2d 854, 859 (Iowa 2005) (discussing the risks of leaving a child in the care of a methamphetamine user and stating "[d]angers and hazards need not be realized; dangers and hazards are by their very nature risks, not certainties."). We find the State presented clear and convincing evidence A.K. is imminently likely to suffer harmful effects from the mother's inability to exercise a reasonable degree of care in supervising the child as a result of the mother's abuse of methamphetamine and marijuana. Thus, we affirm the juvenile court's adjudication under section 232.2(6)(c)(2). As we find clear and convincing evidence of adjudication under section 232.2(6)(c)(2), we need not reach the question of whether adjudication was appropriate under section 232.2(6)(n). See *D.T.*, 435 N.W.2d at 331.

The mother contends the juvenile court erred in transferring custody to the father because the State did not present substantial evidence sufficient to warrant adjudication. As we find the State presented clear and convincing

evidence to support adjudication under section 232.2(6)(c)(2), we affirm the juvenile court's dispositional order.

AFFIRMED.

Vogel, P.J., concurs; Danilson, J., dissents.

DANILSON, J.

I respectfully dissent. The majority decision gave deference to the juvenile court's finding that the mother's drug use did not appear to be isolated, but rather ongoing. The juvenile court reached this conclusion because "the mother had used methamphetamine for an entire week." The juvenile court relied on *State v. Petithory*, 702 N.W.2d 854 (Iowa 2005), which pertained to "the dangers and hazards of leaving one's children in the custody of chronic drug abusers," and involved parents using methamphetamine in the family home. *Id.* at 858. The juvenile court did not describe the mother in this case as a chronic drug abuser. There was also no evidence that the mother used methamphetamine in the family home, or failed to either provide adequate care of the child or exercise a reasonable degree of care in supervising the child.

Clearly, the dangers of methamphetamine use cannot be underestimated; but, if the legislature wanted to provide that a child be adjudicated once a parent uses methamphetamine, it could have so provided. Iowa Code sections 232.2(6)(c) and 232.2(6)(c)(2) require some evidence that the child is not receiving adequate care or supervision, or is imminently likely to suffer harmful effects from inadequate supervision. If such evidence existed in this case, it was not presented. The child was primarily in the care of the child's maternal grandmother and there is no suggestion that the grandmother was not a proper caretaker. I would reverse.