

IN THE COURT OF APPEALS OF IOWA

No. 2-922 / 12-1599
Filed October 31, 2012

**IN THE INTEREST OF J.W., V.W.,
and G.W.,
Minor Children,**

A.P., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals from the orders removing her children and continuing
their removal following allegations of physical abuse. **AFFIRMED.**

Deborah M. Skelton, Walford, for appellant.

Thomas J. Miller, Attorney General, Gretchen Kraemer, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee.

Julie Trachta, Cedar Rapids, attorney and guardian ad litem for minor
child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

BOWER, J.

A mother appeals from the orders removing her children and continuing their removal following allegations of physical abuse. She contends the allegations underlying both orders—that her paramour abused the children—are not supported by the evidence. Because the evidence established removal is necessary for the children's safety and is the least-restrictive, appropriate placement, we affirm.

I. Background Facts and Proceedings.

J.W. and V.W. were adjudicated in need of assistance (CINA) in January 2011. G.W. was born in September 2011 and was adjudicated CINA in January 2012. Prior to G.W.'s birth, the mother became involved with Jason, who is well known to the Department of Human Services (DHS) for his history of domestic violence and substance abuse. Although the DHS directed the mother to end her relationship with Jason, she did not do so immediately. The mother maintains their relationship ended in May 2011.

Following the mother's progress, all three cases were dismissed in May 2012 and the children were returned to their mother's care. However, before the dismissal, the maternal grandmother began reporting to Diana Samuelson, the DHS worker, that the mother was still dating Jason. Samuelson made unannounced stops at the home but did not find Jason there.

On June 1, 2012, the DHS received a report that J.W. and V.W. had injuries; J.W.'s eye was puffy and red and V.W. had a bruise over her right eye. When asked how she was injured, J.W., who was four years of age, stated,

“Daddy Jason got me with a belt.” She raised her shirt to show the worker a welt on the right side of her chest. J.W. stated that Daddy Jason slept in her mother’s bedroom. She further stated that her mother and Daddy Jason spank her with a belt and spatula. Based on these allegations, a child abuse report was founded with Jason listed as the perpetrator.

The children were removed from the mother’s care and initially placed with their grandmother. Believing the grandmother had caused the children’s injuries and coached them to say the injuries were inflicted by Daddy Jason, the mother requested the children be transferred to family foster care. The mother was convinced the grandmother wanted to raise the children herself.

A removal hearing was held on June 11, 2012. The mother testified she noticed V.W.’s black eye on Thursday morning, and then when she asked the daycare provider about it, she was told V.W. had probably been injured the night before while playing. The mother claimed she did not see any injuries to J.W. when she got her dressed the morning of June 1, 2012. The mother claimed she had not seen Jason since he helped her move out of her apartment a year earlier.

Diana Samuelson testified at the hearing that the mother was not surprised that the grandmother was reporting that she was dating Jason. Approximately six weeks before the dismissal of the CINA cases, the mother called to tell Samuelson “she felt like people would be calling in and telling us things that were going on in her home.” When asked if she believed the grandmother’s allegations about the mother’s relationship with Jason, Samuelson

testified that she felt like the grandmother “would play both sides of the fence.” She testified she did not believe the mother was engaging in the behaviors alleged by the grandmother.

The child protective worker, Jamie Trpkosh, testified that the injury on the right side of J.W.’s rib cage was “a linear-type welt mark” that was three to four inches in length and consistent with being struck by a belt. Although it was red rather than bluish in color, it did not appear to have been made just prior to Trpkosh’s viewing it. J.W. told the worker that she lived with her mother and Daddy Jason, and that Daddy Jason slept in her mother’s bedroom. J.W. talked about going to the pet store with Daddy Jason and seeing lizards, as well as Daddy Jason and her mother not being nice to each other. J.W. reported that her mother or Daddy Jason would spank her with a spatula or belt.

The grandmother told Trpkosh that Jason had the mother’s car on June 1, 2012. The grandmother provided Trpkosh with a description of the vehicle and the address where it was located. Trpkosh went to the address and found a car matching the description. Upon looking in the back of the car, Trpkosh discovered a basket containing men’s clothing.

Trpkosh believes Jason was around the children, citing J.W.’s consistent statements that Daddy Jason lives in the home. J.W. also told the foster mother that J.W.’s dad is named Jason. Trpkosh also testified that the mother “has been somewhat nonchalant” about the children’s injuries, which raised concerns.

On June 25, 2012, the juvenile court entered its adjudicatory order. The court found the mother’s credibility and honesty about her relationship with Jason

was at issue. It further found the children could not remain in the home and that reasonable efforts were made to alleviate the need for an out-of-home placement without success. A dispositional hearing was set for August 2012.

At the dispositional hearing, Samuelson testified that she had heard the grandmother coach the children before. She heard the grandmother ask the children leading questions, such as: “[D]idn’t Daddy Jason live with you, didn’t Daddy Jason do, and then there would be a variety of different options of things she would ask the children that he did, didn’t he make you dinner, didn’t he spank you?” She also testified that J.W. mentioned a “Daddy Sophia,” although the mother did not know anyone named Sophia.

Jake Tornholm, a DHS worker who began working with the family in June 2012, also testified at the dispositional hearing. Tornholm testified that there was an incident where he asked the mother if she knew where Jason was and she denied that she did. A week later he learned that Jason had come into the Subway store where the mother worked. Tornholm had no explanation for how the injuries to the children had occurred.

Amy Rosauer is the children’s therapist. She testified at the dispositional hearing that J.W. had mentioned Daddy Jason. When Rosauer first began doing visits with the children in May or June of 2012, J.W. would say, “Daddy Jason was at home, he doesn’t live with me anymore.” On August 8, 2012, J.W. told Rosauer that Daddy Jason had spanked her:

She said Daddy Jason spanked her and she also told me that with—this came out of the blue. I was just driving them to [the mother]’s house. They had the windows down and . . . she pointed

outside and said something about Jason. Something about he works there. . . .

And she goes, I used to call Jason Daddy Jason and then she said that Daddy Jason spanked me and that wasn't very nice. . . . And then she said that Daddy Jason tried to grab [G.W.] from mom and that wasn't very nice either. . . .

. . . .
. . . Whenever she talks about Daddy Jason she's pretty—like, we did this. She just seems to know, like, it's an experience for her is what it sounds like. It's something that she's experienced and she's telling her story about it, is how I would put it.

At the dispositional hearing, the mother again denied that she continued to have contact with Jason. She reiterated her belief that the grandmother had injured the children.

On August 16, 2012, the juvenile court entered its dispositional order continuing the removal of the children. The court found, "The mother's credibility and honesty about her relationship with Jason is at issue together with her pattern of poor insight and judgment about the men she exposes her children to."

II. Scope and Standard of Review.

We review child-in-need-of-assistance proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review the facts and the law, and adjudicate the parties' rights anew. *Id.* While we give weight to the juvenile court's fact findings, we are not bound by them. *Id.* In all juvenile proceedings, our fundamental concern is the child's best interests. *Id.*

III. Analysis.

Iowa Code section 232.95(2)(a) (2011) allows temporary removal where substantial evidence shows removal is necessary to avoid imminent risk to the child's life or health. The mother contends the evidence upon which the removal

was based was predominantly hearsay, and unreliable hearsay at that. She argues J.W.'s statements that Daddy Jason inflicted the injuries were not credible. She cites to the fact that J.W. referenced Daddy Sophia and the mother's testimony regarding the child's active imagination as support.

We find substantial evidence supports the removal. Both J.W. and V.W. had unexplained injuries. J.W. stated the injuries were caused when Daddy Jason used a belt. The welt on J.W.'s chest was consistent with getting struck by a belt. Unlike the statement about "Daddy Sophia," J.W. consistently talked about Daddy Jason. The children's therapist testified that J.W. related stories about Daddy Jason as though it was something J.W. had experienced. J.W. never stated anyone else had caused her injuries.

Although the mother argues J.W. is a young child who makes up stories, the district court found the mother's credibility and honesty regarding her relationship with Jason was in question. Given the child's repeated statements about Daddy Jason spanking or using a belt to discipline, the unexplained injuries on J.W. and G.W., the mother's "nonchalance" about her children's injuries, and the questions about the mother's credibility, we find substantial evidence shows temporary removal was necessary to avoid imminent risk to the children's health.

Section 232.99(4) provides that at the close of a dispositional hearing, "the court shall make the least restrictive disposition appropriate concerning all the circumstances of the case." Given concerns for the children's safety, the need

for removal was established. The least restrictive disposition that is appropriate under the circumstances was the children's continued removal.

Finding substantial evidence supports the temporary removal and the disposition, we affirm.

AFFIRMED.