

IN THE COURT OF APPEALS OF IOWA

No. 3-488 / 13-0440

Filed May 30, 2013

**IN THE INTEREST OF T.W. and M.W.,
Minor Children,**

A.W., Mother,
Appellant,

N.W., Father,
Appellant.

Appeal from the Iowa District Court for Emmet County, Donald J. Bormann, District Associate Judge.

A mother and a father appeal from a child in need of assistance adjudication order. **AFFIRMED.**

Chris Cooklin, Spirit Lake, for appellant mother.

Bethany J. Brands of Brands Law Office, Spirit Lake, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Douglas Hansen, County Attorney, and Rosalise Olson, Assistant County Attorney, for appellee.

Shawna Ditsworth, Spirit Lake, attorney and guardian ad litem for minor children.

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

DANILSON, J.

A mother and a father appeal from a child in need of assistance adjudication order. On our de novo review and in light of the domestic violence and anger experienced in this family, we come to the same conclusion as the juvenile court and we therefore affirm.

I. Background Facts and Proceedings.

The mother and father are parents to two children: T.W., born in 2006, and M.W., born in 2007. In 2007, and again in 2009, the department of human services (DHS) conducted child protective assessments concerning these children. In 2007, there was a founded report of denial of critical care based on M.W. having been born testing positive for marijuana and the mother's admission that she used marijuana during her pregnancy. In 2009, there was a founded report of denial of critical care (failure to provide adequate supervision) based upon domestic violence in the home. The mother tested positive for methamphetamine at the time. After both founded assessments, the children were adjudicated children in need of assistance (CINA) and the family received services.

The 2009 CINA case was closed in July 2010. DHS reported the parents had participated in and completed all services available to them, including substance abuse treatment for the mother and batterer's education for the father. DHS involvement with the family was terminated.

On October 27, 2012, the mother called police from a neighbor's home reporting that the father had kicked her in the leg with his steel-toed boots and

burned her hand with a cigarette. The mother left the home to call police because the father had taken her cell phone and keys. The father left the area, but returned while police were present. The children were in the family home. The police observed bruising on the mother's leg, but she refused to allow them to photograph the injury. Upon his return, the father denied kicking the mother, stating she had had a seizure and burned herself. The father was arrested and charged with domestic abuse assault.

Kelly McKeever, a DHS protective worker who had also conducted the two previous assessments, again conducted a child protective assessment. He interviewed the children and each reported physical confrontations between the parents. For example, M.W. told McKeever her father "is mean sometimes. He hurts mommy." T.W. told McKeever, "My dad was angry because he thinks he is the boss of her and he hurts her if she doesn't do the things he wants her to do." T.W. told McKeever that on Friday her dad had kicked her mom and put a cigarette out on her hand. McKeever wrote:

She stated she had been in her bedroom at the time of the incident but had come out one time because she could hear them yelling. She stated, "My dad was hurting her and he told me to go back to my room. I came out to see what they were doing."

T.W. also told McKeever she had seen her dad hit her mother with a pan one time. The child abuse assessment was founded on a denial of critical care (failure to provide proper supervision).

A CINA petition was filed on December 7, 2012. The parents contested the adjudication at the hearing scheduled for December 20, and the matter was rescheduled.

On December 17, 2012, in the ongoing criminal proceedings concerning the father, the district court lifted the no-contact order to the extent that the father was to be allowed visitation with the children “as established through [the mother’s] sister, mother or other representatives designated or approved by the Department of Human Services to facilitate visitation.” The father was also allowed to “communicate telephonically” with the mother “regarding the business they have together.” However, “[i]n no instance are the parents and the children to be all in the same place at the same time.”

On January 31, 2013, just before the adjudication hearing was to begin, the father asked that his court-appointed attorney be replaced because he was unhappy with the result of the criminal proceedings with that same attorney the day before.¹ The mother also requested a new attorney. The State resisted, noting the CINA petition had been pending for some time. The court denied the motions and the adjudication hearing was held.

McKeever testified about conducting all three protective assessments concerning these children. McKeever testified that T.W. told him during the most recent assessment that she was fearful of her father. He testified the mother had recanted claims of domestic violence on earlier occasions. He expressed concern for the children in light of the family’s history of domestic violence and substance abuse.

¹ Though charged with domestic abuse assault, the father pleaded guilty to the charge of disorderly conduct. The district court found a factual basis for the plea in that “[the mother] left her residence after [the father] had made threatening gestures which he knew or should have reasonably known is likely to provoke a violent reaction by another.”

Family Safety, Risk and Permanency (FSRP) services coordinator for the family, Andrea Ringgenberg, testified she was visiting the mother and children in their home weekly, was working on a parenting book with the mother, and had provided budgeting materials to the mother. She noted the children had been reported absent from school on several occasions. However, she did not have concerns after speaking to the mother about the absences. Ringgenberg stated she had no concerns about the mother's parenting abilities during visits. She reported that the mother was asked to take a drug test during the family team meeting and refused. Ringgenberg had not been successful in her attempts to contact the father.

DHS social worker, Beth Borchardt, testified that she is the case worker for the family and had been the case worker in 2009 CINA case. In the prior case, drug usage by mother and domestic violence by father were issues. She stated the mother's refusal to take a drug test raised a question in light of her prior usage. Borchardt noted that the father had completed a batterer's education program in the prior case. Borchardt testified that the present concerns were similar to those in the previous case in that the mother and father had separated and there was a report of domestic violence. Borchardt stated that during the family team meeting, the mother indicated the father needed help with domestic violence issues and she would like the children to get counseling. The mother had agreed to a referral for a child advocate. Borchardt opined that children can be adversely affected by domestic violence in the home. She further expressed concern because the no contact order had been lifted the day

before and the father was seeking the return of his firearms. She recommended adjudication and court involvement.

The court adjudicated M.W. and T.W. CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2013), which defines a “child in need of assistance” as a child “[w]ho has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child’s parent . . . to exercise a reasonable degree of care in supervising the child.” The children were to remain in the mother’s care and services provided. Both parents appeal, contending there is not clear and convincing evidence to support the finding that the children are in need of assistance.

II. Scope and Standards of Review.

We review CINA 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. Discussion.

The court has often observed that “[t]he future can be gleaned from evidence of the parents’ past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The parents have been involved with DHS twice before due to issues with domestic violence, and yet the issue rises again. We conclude the children are imminently likely to suffer harmful effects in the future as a result of the parents continuing issues with domestic violence. The mother,

at least at the time of the family team meeting, acknowledged that the children had witnessed violence in the home and would benefit from services. There is a risk that the children will not be kept safe—physically or emotionally—because these parents have not resolved the issues of anger, violence and instability that have marked their relationship. We find clear and convincing evidence for the adjudication of these children as in need of assistance. See Iowa Code § 232.2(6)(c)(2) (defining CINA as child “imminently likely to suffer harmful effects”); *cf. In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990) (noting statutory termination provisions “are designed to prevent probably harm to the child and do not require delay until after harm has occurred”).

We therefore affirm.

AFFIRMED.