

**IN THE COURT OF APPEALS OF IOWA**

No. 3-851 / 13-1090  
Filed September 18, 2013

**IN THE INTEREST OF E.C., A.C., G.N., J.N., and A.N.,  
Minor Children,**

**B.N., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Jefferson County, William S. Owens, Associate Juvenile Judge.

A mother appeals from the adjudication of her children as children in need of assistance. **AFFIRMED.**

Terri Quartucci, Fairfield, for appellant mother.

William Glass, Keosauqua, for J.N., father of G.N., J.N., and A.N.

Patricia Lipski, Fairfield, for G.C., father of E.C. and A.C.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Tim W. Dille, County Attorney, for appellee State.

Mary Krafka, Ottumwa, for minor children.

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

**EISENHAUER, C.J.**

A mother appeals from the adjudication of her six<sup>1</sup> children as children in need of assistance. She raises five claims on appeal: (1) reasonable efforts were not made to prevent the initial and continued removal; (2) there is no clear and convincing evidence the children were or continue to be in need of assistance; (3) the court erred in not removing the guardian ad litem upon the mother's request; (4) the judge should have recused himself because of prior contact with the mother in specialty drug court and a prior child-in-need-of-assistance case; and (5) the mother should receive an original of her drug test results instead of a copy provided by the State. We affirm.

The family first came to the attention of the department of human services in 2005 because of substance abuse by the parents and domestic violence. Since then the children have repeatedly been removed from the mother's care while she dealt with substance abuse problems or domestic violence, then returned to her care when she appeared to have overcome her substance abuse issues and the violence had ended when a no-contact order prevented contact by the abuser. The last case was closed in late 2012, and the children were returned to the mother's care. A no-contact order prevented contact by the father of the three youngest children.

In March 2013 the department investigated reports the mother was not caring for the children or providing supervision because she had relapsed on methamphetamine and the father of the three youngest children was in the home

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<sup>1</sup> The oldest child, M.S., is no longer involved in these proceedings because she reached age eighteen in May 2013 and the case was dismissed.

despite the no-contact order. The oldest child, who was pregnant, had recently left the home after a fight with the mother and was staying with a neighbor. The child protective worker came to the home with two deputies, who removed the children from the home. The mother refused a hair stat test for drugs without a court order and disputed the children's removal. The two oldest boys were placed in foster care. The youngest three children were placed with their paternal grandmother.

In April the court held a combined adjudicatory hearing and hearing on the temporary removal. The court confirmed the removal, concluded the children were children in need of assistance under Iowa Code section 232.2(6)(c)(2) and (n) (2013), and confirmed the children's out-of-home placements as the least restrictive under the circumstances.

In April the mother requested removal of the guardian ad litem. The court held a dispositional hearing in late May. At the hearing the mother's attorney made an oral motion for recusal of the judge because the judge had dealt with the mother previously in family drug treatment court. The court received reports and a case permanency plan with recommendations and left the record open for thirty days for parties to file written objections or comments concerning the reports or the case plan. In June the mother filed a motion for release of drug testing results.

In July the court issued its dispositional order and addressed all pending motions and objections. The court overruled the motion for recusal based on a failure to prove actual prejudice. It overruled the motion to remove the guardian

ad litem as untimely and moot.<sup>2</sup> The court overruled the motion for release of drug test results, but provided the State would make the results available to the mother's attorney. It concluded the least-restrictive appropriate placement for the children was out of the home and the children would be in imminent risk to life or health unless removed. The court also made a finding the parents were not participating in services. The mother appeals.

"Our review of this juvenile case is de novo. We review both the facts and the law and adjudicate rights anew. Although we give weight to the juvenile court's findings of fact, we are not bound by them." *In re E.G.*, 745 N.W.2d 741, 743 (Iowa Ct. App. 2007) (citations omitted).

*Reasonable Efforts.* The mother contends there was not clear and convincing evidence reasonable efforts were made to prevent the children's removal and to protect them from imminent danger. She argues the children were not in imminent danger, her mother was available to help care for the children, and reasonable efforts—such as a safety plan—were not made to prevent removal. The trial court found the mother's drug use and the presence of the father of the three youngest children in violation of the no-contact order put the children in imminent danger. See *State v. Petithory*, 702 N.W.2d 854, 859 (Iowa 2005) (noting the hazards posed by a methamphetamine addict). The court found reasonable efforts had been made to prevent removal and to make it possible for the children to be returned home, including: substance abuse treatment; drug testing; treatment court services; and family safety, risk, and

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<sup>2</sup> The motion was moot because it was based entirely on issues relating to the oldest child, whose case had been dismissed when she reached age eighteen in May.

prevention services. We conclude reasonable efforts were made and affirm on this issue.

*Adjudication.* The mother contends there was not clear and convincing evidence the children were or continue to be in need of assistance as set forth in section 232.2(6)(c)(2) or (n). The allegations of drug use and violation of the no-contact order led to the children's removal. Both allegations were confirmed upon investigation. The mother's relapse on methamphetamine alone supports both grounds for adjudication. The mother is not participating in services except visitation. Until the mother has demonstrated success in remaining drug free, the children would be at risk if returned to her care. Consequently, the children remain in need of assistance. We affirm on this issue.

*Guardian ad Litem.* The mother contends the court erred in overruling her motion to replace the guardian ad litem. The grounds raised in the mother's motion related solely to the oldest child. The motion was not made until two weeks after the adjudicatory hearing. The guardian ad litem filed a response. The court overruled the motion as both untimely and moot.

We find the guardian ad litem served the oldest child properly and the mother's complaints are not supported by the evidence. In addition, the oldest child's case has been dismissed because the child no longer is a minor. We affirm the trial court's decision to overrule the mother's motion to replace the guardian ad litem. The mother's summary best-interest-of-the-children claim is not preserved for our review because it was not raised in the trial court. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). It also is too general for us to address

on appeal. See *Soo Line R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994).

*Recusal.* The mother contends the judge should have recused himself based on bias or prejudice because the judge had dealt with the mother in family drug treatment court in a previous juvenile case. She argues the judge “has a more intimate relationship with parents who are involved with his Family Drug Treatment Court and thus should not hear cases where former parent participants come before him in the future for drug-related accusations.”

The burden of showing grounds for recusal is on the party seeking recusal. *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997). This burden is substantial, and we will not overturn the trial judge’s decision absent an abuse of discretion. *State v. Farni*, 325 N.W.2d 107, 110 (Iowa 1982). In order to show an abuse of discretion, a party must demonstrate the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *In re Estate of Olson*, 479 N.W.2d 610, 613 (Iowa Ct. App. 1991).

Actual prejudice must be shown before a recusal is necessary. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). The mother did not even allege prejudice, let alone demonstrate the judge was prejudiced against her because of prior dealings with the judge in family drug court. She only expressed her “concern” the prior dealings “could cause a bias, prejudice or conflict of interest.” The trial court did not abuse its discretion in denying the request for recusal based on a lack of actual prejudice. We affirm on this issue.

*Drug Test Results.* The mother contends the court erred in not providing for her to receive an original of the drug test results instead of a copy provided by

the State. She questions the validity of the results and alleged she was “aware of [department] caseworkers in Iowa manipulating results received from the lab.” The court found the mother presented no evidence to support her claim of manipulation and there was no such evidence in the record. The court ordered the case coordinator to make the June 5, 2013 test results available to the mother’s attorney when the department received the results.

The mother argues she “gave a sample from her body and should be able to have direct access to the results when questions as to the validity of those results” exist. We find nothing in the record supporting the mother’s assertion the validity of the test results is in question. We conclude the court’s order the mother be provided with a copy of the test results satisfies due process. We affirm on this issue.

**AFFIRMED.**