

**IN THE COURT OF APPEALS OF IOWA**

No. 7-417 / 07-0784

Filed June 27, 2007

**IN THE INTEREST OF E.J.H.,  
Minor Child,**

**T.J.H., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother appeals the adjudication of her son by the district court as a  
Child In Need of Assistance (CINA). **AFFIRMED.**

Cory Goldensoph, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Harold Denton, County Attorney, and Nicholas Scott, Assistant County  
Attorney, for appellee.

Richard Mitvalsky of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for  
appellee father.

Ryan Tang, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**VOGEL, J.**

T.H. appeals the adjudication of her three-year old son, E.J.H., by the district court as a Child In Need of Assistance (CINA). Upon our de novo review, *In re M.A.F.*, 679 N.W.2d 683, 684 (Iowa Ct. App. 2004), we affirm.

E.J.H. has been in the care of his mother since his birth in April 2004. However, the mother has a long history with the Iowa Department of Human Services (DHS) as her older children were removed from her care for lack of supervision, physical abuse, and denial of critical care. In April 2005, DHS received a report that the mother was living with a registered sex offender, who has a history of abusing young children. DHS also had ongoing concerns over the condition of the home, the child's lack of cleanliness, and the mother's association with people not well-known to her. A prior CINA petition was dismissed on June 14, 2006, after the mother cooperated to remedy the situation and upon the parties' belief that E.J.H. was safe in her care. However, later that same day the mother tested positive for cocaine. The mother refused to allow DHS involvement in her life, so a CINA petition was again filed. Following a contested hearing in April 2007, the district court adjudicated E.J.H. a CINA pursuant to Iowa Code section 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child). The court left E.J.H. in his mother's care due to her cooperation with DHS and acceptance of protective services. The mother appeals the adjudication.

The mother argues that clear and convincing evidence does not support E.J.H.'s CINA adjudication. The State must prove the allegations of the CINA petition by clear and convincing evidence, Iowa Code § 232.96(2), which means

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). Much of the evidence presented at hearing focused on the ongoing nature of DHS’s involvement with the mother and this child. She has been offered and participated in services on and off since mid-2005 to address many of the same issues that remain of concern in this case: cleanliness of the home and of the child, safety of the child, the mother’s untreated substance abuse, and exposing the child to inappropriate people, such as the mother’s paramour who is a registered sex offender. The DHS provider testified that she would not expect a parent that had cooperated and successfully participated in services in the past to repeatedly require DHS intervention for the same issues. E.J.H.’s mother, however, does not appear to have internalized the necessary skills to cope and maintain her progress after DHS supervision is ended and the CINA case is dismissed. The record demonstrates a cycle of the mother’s cooperation with DHS and her ability to alleviate immediate concerns, but only when she is compelled to do so. When the structure provided by DHS and the services are ended, the mother falls back in her old habits, exposing the child to adjudicatory harm.

As always, our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998). As noted during the hearing, DHS’s main concern is E.J.H.’s safety. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in a child’s best interests). We

conclude that clear and convincing evidence supports adjudication, the adjudication is in the child's best interests, and affirm.

**AFFIRMED.**