

**IN THE COURT OF APPEALS OF IOWA**

No. 7-444 / 07-0840

Filed July 12, 2007

**IN THE INTEREST OF E.B.,  
Minor Child,**

**M.V.B., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,  
Judge.

A mother appeals the removal, adjudication, and disposition orders in child  
in need of assistance proceedings. **AFFIRMED.**

Christopher Kragnes, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant  
County Attorney, for appellee State.

Ryan Weese, West Des Moines, for intervenor foster parents.

Charles Fuson of the Youth Law Center, Des Moines, for the minor child.

Considered by Mahan, P.J., and Baker, J. and Beeghly, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**BEEGHLY, S.J.****I. Background Facts and Proceedings**

May is the mother of Elise, who was born in March 2001.<sup>1</sup> In November 2004, Elise came under the custody of the Iowa Department of Human Services while May was in jail awaiting extradition to Texas. May set fire to a home in the presence of Elise. Elise had continuing nightmares about this event, and was diagnosed with posttraumatic stress disorder. The child was placed with foster parents Rodney and Donna in Iowa.

In February 2005, the Iowa district court appointed James and Sheri as guardians of the child. James and Sheri were residents of Texas, and Elise moved to Texas. May was convicted of theft and arson in Texas and is serving a prison sentence there. In May 2005, James and Sheri brought Elise back to Iowa and left her with Rodney and Donna, the original foster parents. They did not inform the Department they were no longer caring for Elise. James and Sheri gave Rodney and Donna power of attorney for the child. The guardianship was closed in February 2006.

After the Department became aware of the situation, the State filed a petition in Iowa juvenile court in May 2006 seeking to have Elise adjudicated a child in need of assistance (CINA). The juvenile court entered an order removing the child from May's care. The court then stayed the Iowa proceedings because

---

<sup>1</sup> The whereabouts of the father are unknown. He has not been involved in the child's life.

there were proceedings pending in Texas regarding Elise.<sup>2</sup> The matter then languished for several months due to uncertainty concerning whether Iowa or Texas had jurisdiction of the child.

The Texas case was dismissed on April 4, 2007. On April 30, 2007, the juvenile court in Iowa entered an order removing Elise from May's care and placing her in foster care. The court adjudicated Elise CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2005) (child is likely to suffer harm due to parent's failure to exercise care in supervision), (j) (child is without a parent, guardian, or other custodian and (n) (parent's imprisonment results in child not receiving adequate care). A disposition order was entered on the same date. May has appealed the removal, adjudication, and disposition orders.

## **II. Standard of Review**

Our scope of review in juvenile court proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

## **III. Merits**

May contends the juvenile court should not have adjudicated Elise CINA. She states Rodney and Donna may provide for Elise without juvenile court intervention. She believes Elise's needs may be met without the supervision of the juvenile court. May asserts Elise has not suffered any harmful effects by staying with Rodney and Donna.

---

<sup>2</sup> At about the same time they were named guardians, James and Sheri initiated proceedings in Texas seeking to terminate May's parental rights. They later sought to dismiss the case, but due to several motions filed by May, the case continued.

In seeking to have Elise adjudicated CINA, the State pointed out May was in prison in Texas, and the guardianship held by James and Sheri has been dissolved. Therefore, the power of attorney given to Rodney and Donna by the guardians may no longer be effective. The State argued Elise had been abandoned in the State of Iowa with no one to make decisions for her, necessitating ongoing juvenile court supervision. The guardian ad litem agreed Elise was a homeless child, but for the intervention of the State.

The juvenile court stated it was adjudicating Elise CINA “to resolve some of the uncertainties here going forward, particularly as they would relate to authorization for medical care and any other needs that the child might have.” On our de novo review, we concur in the juvenile court’s decision. Elise was left in Iowa without parental supervision or an effective guardianship. It is unknown when May will be released from prison. May committed arson in the presence of her child, thereby causing harm to the child. Even when May is released, it is unlikely she could immediately safely resume care of Elise. We conclude the juvenile court’s supervision is necessary under the facts of this case.

**AFFIRMED.**