

IN THE COURT OF APPEALS OF IOWA

No. 7-626 / 07-0781
Filed September 6, 2007

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

L.P.J., Mother,
Appellant.

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

A mother appeals from a juvenile court order that adjudicated her children
as in need of assistance. **AFFIRMED.**

Kenneth Weiland of Andrew & Weiland, P.C., Knoxville, for appellant
mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Steven Goodlow, County Attorney, for appellee State.

Michael Fisher, Oskaloosa, for appellee father.

Jonathan Willier, Centerville, for minor children.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

A mother appeals from the juvenile court order that adjudicated her children as in need of assistance. We affirm.

I. Background and Facts

L.J. is the mother and D.S. is the father of C.J., born in March 1994, N.J., born in April 1997, E.J., born in March 2000, and S.S., born in January 2006. The family came to the attention of Iowa Department of Human Services (DHS) in November 2006, when the department received a report regarding domestic abuse and drug use in the home.¹ When a DHS child protection worker and law enforcement officials came to the home, the father had fresh scratch marks on his face, the home was cluttered and in disarray, and materials used in the manufacture of methamphetamine were discovered in a van parked near the home. Both parents consented to drug testing, and the father's test was positive for methamphetamine and marijuana. The mother signed a voluntary foster care arrangement, and the children were removed from the home. S.S. tested positive for exposure to methamphetamine; the other children were not tested.

In December 2006, DHS issued a founded child abuse report for denial of critical care. On March 19, 2007, the children were adjudicated as children in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2), (n), and (o) (2005). The mother appeals. The father, who at the time of the CINA hearing was incarcerated awaiting trial on federal gun charges, is not a party to this appeal. Additional facts as relevant will be discussed below.

¹ The family previously came to the attention of DHS in 2001, when a founded report for denial of critical care and lack of supervision was issued. The family participated in skill development services from October 2001 through December 2002.

II. Merits

Our review of CINA proceedings is de novo. Accordingly, we review both the facts and the law, and adjudicate rights anew as to those issues which have been properly preserved and presented. We accord considerable weight to the fact findings of the juvenile court, especially concerning the credibility of witnesses, but we are not bound by those findings. Our supreme concern lies with the child's welfare and best interests.

In re N.M.W., 461 N.W.2d 478, 480 (Iowa Ct. App. 1990) (citations omitted); accord *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Although the juvenile court relied on three sections to adjudicate the children in need of assistance, we need only find grounds under one section to affirm the court's ruling. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

The mother argues the juvenile court erred in finding the existence of sufficient evidence to establish the children as in need of assistance. To prove a child is in need of assistance under section 232.2(6)(c)(2), the State must prove the child 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." Under section 232.2(6)(n), the State must prove the parent's "mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care." Under section 232.2(6)(o), the State must prove that in the child's "body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent." The State must prove these allegations by clear and convincing evidence. Iowa Code § 232.96(2). "Clear and convincing evidence is evidence that leaves 'no serious or substantial doubt as to the correctness of the conclusion drawn from it.'" *D.D.*, 653 N.W.2d at 361 (citation omitted).

On our de novo review, we conclude the record contains clear and convincing evidence to establish the children as in need of assistance. The mother argues that the children are no longer in imminent harm because the only parent who tested positive for drug use is incarcerated and that, due to the father's incarceration, there will be no more opportunity for domestic abuse. We disagree. Notwithstanding the father's incarceration, the record contains clear and convincing evidence to support the juvenile court's determination. The children have witnessed several severe incidents of domestic violence, yet when DHS attempted to initiate counseling for the children, the mother refused to sign the necessary release. There is evidence of drug use and drug manufacturing near the home, and the mother refused to participate in a hair test to determine her drug usage. S.S. tested positive for exposure to methamphetamine. Under these circumstances, we affirm the juvenile court's finding all of the children as in need of assistance under Iowa Code sections 232.2(6)(c)(2) and (n). We also affirm the court's finding with regard to S.S. under section 232.2(6)(o).

The mother contends the juvenile court erred in failing to place her children with relatives. At the CINA hearing, the mother mentioned her sister-in-law and the children's maternal grandmother were willing to take the children. There was, however, no evidence presented regarding the suitability of either for placement of the children. Further, the court did not address this issue in its orders nor did the mother file a post-trial motion requesting a ruling on the issue. The mother has thus not preserved error on this issue. See *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (finding failure to file a motion to enlarge or amend precluded challenge of deficiencies in court order); *In re S.V.G.*, 496 N.W.2d 262, 264 (Iowa

Ct. App. 1992) (“We have repeatedly held matters not raised in the trial court . . . cannot be effectively asserted for the first time on appeal.”).

The mother next argues the juvenile court erred in refusing to dismiss the proceedings. We review the denial of a motion to dismiss for errors at law. *In re L.F.*, 590 N.W.2d 284, 285 (Iowa Ct. App. 1998). Pursuant to Iowa Rule of Juvenile Procedure 8.11, the juvenile court has discretion to dismiss CINA proceedings when an adjudicatory hearing is not held within sixty days of the filing of the CINA petition. The mother and her attorney were present at the time the hearing was set and did not object to the date, and there was no showing that the mother was prejudiced by the delay. We conclude the court did not abuse its discretion in not dismissing the proceeding. See *N.M.W.*, 461 N.W.2d at 481 (holding violation of deadline for adjudicatory hearing nonprejudicial and noting parties should bring delays to the court’s attention as soon as possible).

The mother further argues the juvenile court erred in considering evidence of her prior bad acts. She fails, however, to identify those bad acts or how she suffered any prejudice from their admission. While past conduct cannot serve as the sole basis for a CINA adjudication, it is appropriate for the court to consider a parent’s past performance in assessing whether a child is in need of assistance. *Id.* at 480-81; *In re J.C.*, 560 N.W.2d 33, 35 (Iowa Ct. App. 1996); see also *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (noting evidence of a parent’s past performance may be indicative of the quality of future care the parent is capable of providing). We conclude that prior bad acts were not improperly admitted.

We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the juvenile court is affirmed.

AFFIRMED.