

IN THE COURT OF APPEALS OF IOWA

No. 8-385 / 08-0398

Filed May 29, 2008

IN THE INTEREST OF M.J.S., Minor Child,

L.J.S., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Stratka, Associate Juvenile Judge.

The mother appeals the order adjudicating her daughter a child in need of assistance. **REVERSED AND REMANDED.**

Natalie Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

Sarah E. Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, guardian ad litem for minor child.

Russell Wanke, Dubuque, pro se.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

A mother appeals from the adjudication of her child to be in need of assistance (CINA). She contends the court erred in allowing the State to amend the CINA petition at the close of the CINA hearing to add an additional ground for adjudication. In reviewing the issue, the question is whether the mother's due process rights were protected when the trial court allowed the State to interject a new ground for CINA adjudication following the hearing. See *In re D.E.D.*, 476 N.W.2d 737, 739 (Iowa Ct. App. 1991) (holding that in reviewing whether the juvenile court properly allowed the amendment of a termination of parental rights petition during trial, scope of review is not abuse of discretion but whether the parent's due process rights were protected).

The State filed a CINA petition alleging the child was in need of assistance pursuant to Iowa Code section 232.2(6)(k) (2007) (parent desires for good cause to be relieved of the child's care and custody). The child was removed from the custody of her mother on the same date the petition was filed. At the close of the adjudication hearing, the State moved to amend the petition to include section 232.2(6)(c)(2) (child has suffered or is imminently likely to suffer as a result of parent's failure to exercise reasonable care in supervising the child). The mother objected, claiming the amendment violated her due process rights.

The juvenile court found the State failed to prove the grounds for CINA adjudication as alleged in the original petition. The court, however, found the evidence presented did establish by clear and convincing evidence the grounds for adjudication pursuant to section 232.2(6)(c)(2). The court found the motion to amend closely resembled a motion to amend to conform to the proof pursuant to

Iowa Rule of Civil Procedure 1.402(4) and rule 1.457. It allowed the amendment and adjudicated the child to be in need of assistance pursuant to the new ground. At the dispositional hearing the child was confirmed to be a child in need of assistance.

Both the Federal and State Constitutions provide no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. amends. V, XIV; Iowa Const. art. I, § 9. “[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). A natural parent has due process rights relating to a CINA proceeding. *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994).

Clearly, we have a duty to enforce the procedural safeguards contained in Iowa Code chapter 232. Both DHS and the juvenile court have the important function of protecting children who are in need of assistance. However, taking a child away from the care and custody of a parent is of serious consequence. We therefore must carefully observe statutory procedural safeguards.

Id. at 871.

Due process requires sufficient notice of the complaint against the parent and of the time of the hearing. *D.E.D.*, 476 N.W.2d at 739. In *D.E.D.*, 476 N.W.2d at 739-40, this court held that a father’s due process rights were violated where the State was allowed to amend a termination petition during trial to allege a new ground for termination because he had no notice prior to the hearing of the ground under which termination was decreed.

Although CINA proceedings are not the same as termination proceedings, *In re L.K.S.*, 451 N.W.2d 819, 822 (Iowa 1990) (“Although a CINA proceeding may be the first step toward the termination of fundamental parental rights, we

refuse to equate the consequences of a CINA proceeding with those of parental termination.”), we conclude the mother’s due process rights were violated here as well. The mother was not provided with notice of the grounds for which her child was adjudicated in need of assistance. The ground originally pled (the parent for good cause wishes to be relieved of custody of her child) and the amended ground (child has suffered or is imminently likely to suffer as a result of parent’s failure to exercise reasonable care in supervising the child) are distinct and the new ground clearly alleges some failure on the mother’s part. Fairness requires notice of these allegations in advance of trial. In fact, an objection to the mother’s question to a family support worker regarding whether the mother’s parenting presented an imminent danger to the child was sustained on the basis it was irrelevant because it was not a standard being considered by the court for CINA adjudication. While we recognize juvenile court proceedings are informal and designed to protect children, *In re Henderson*, 199 N.W.2d 111, 120 (Iowa 1972), this goal may still be met without sacrificing the rights of the parents.

Because the mother did not receive notice and an opportunity to be heard, we reverse the order adjudicating the child in need of assistance pursuant to section 232.2(6)(c)(2). We remand the case to the district court for hearing on whether the grounds exist for adjudication under this section after proper notice has been given. Nothing in this opinion addresses the original removal of the child from her mother or if the removal should continue.

REVERSED AND REMANDED.