

IN THE COURT OF APPEALS OF IOWA

No. 8-396 / 08-0664

Filed June 25, 2008

**IN THE INTEREST OF T.M.,
Minor Child,**

**R.M., Mother,
Appellant,**

Appeal from the Iowa District Court for Palo Alto, Nancy L. Whittenburg,
Judge.

A mother appeals from an order in a child in need of assistance
proceeding. **AFFIRMED.**

John P. Greer, Spencer, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Peter C. Hart, County Attorney, for appellee.

Donald H. Capotosto, West Bend, guardian ad litem for minor child.

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

EISENHAUER, J.

A mother appeals from the order in a child in need of assistance (CINA) proceeding finding her child could not be returned to her care. She contends the court erred in finding the grounds for the CINA adjudication continued to exist. She also contends the child should be returned to her care. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

A petition for CINA was filed on July 12, 2007, pursuant to Iowa Code section 232.2(6)(h) (2007) (child committed a delinquent act as a result of pressure, guidance, or approval from a parent) following allegations the child operated a motorcycle at the age of fourteen with the mother's consent. Prior to hearing on the petition, there was a founded child abuse report against the mother for physical abuse that resulted in injuries to the child's mouth and nose. The CINA petition was then amended to include an allegation the mother had physically abused the child. On August 7, 2007, the court ordered the child's immediate removal to protect him from imminent risk to his life or health. Custody was placed with his maternal aunt.

On September 4, 2007, the parties stipulated and the court found the child to be in need of assistance pursuant to Iowa Code section 232.2(6)(f) (child in need of treatment for serious mental illness and parent is unwilling to provide treatment). Pending the disposition hearing, the parties also stipulated and the court ordered the child to remain in the custody of the maternal aunt.

On December 19, 2007, at the disposition hearing, the court confirmed T.M. to be a CINA and continued his placement with his aunt.

A review hearing was held on April 2, 2008. T.M. was again confirmed to be CINA and continued in the custody of his aunt. The mother appeals from this order.

When a parent seeks return of a child removed as the result of a CINA adjudication, the parent has the burden of proving by a preponderance of the evidence that the child will not suffer harm if returned home. *In re D.S.*, 437 N.W.2d 587, 588 (Iowa Ct. App. 1989). The harms that must be negated are specified in Iowa Code section 232.2(6). They consist of the grounds for adjudicating a child to be in need of assistance. The threatened adjudicatory harm relied upon by the reviewing court need not be the specific adjudicatory harm that precipitated the original CINA adjudication. *In re S.W.*, 500 N.W.2d 32, 34 (Iowa 1993).

As this case has evolved, much of the attention has been on the mother and her ability to safely provide a home for her son. The mother was unable to show by a preponderance of the evidence that the child should be returned home at this time. The mother appears to have mental health issues that are causing her to be irrational, aggressive, and overly suspicious of the agencies and individuals providing services to her and the child. She had not yet begun services to address the abuse that preceded the CINA adjudication. A clinical psychotherapist opined that while he would like to see the mother and child reunited, he did not believe it was in the child's best interest that reunification occur at this time.

The mother also contends the child should be placed in the custody of the Iowa Department of Human Services, not with maternal aunt. However, the

mother's wish to have custody transferred appears to be a product of her mental health issues. The child has done well in the care of his maternal aunt. Furthermore, there is a preference for placing children in the care of a relative rather than with the Iowa Department of Human Services. *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) ("The home of a relative is considered less restrictive than placement in a private agency, facility or institution or placement with the department of human services.").

Accordingly, we affirm the CINA review order continuing placement of the child with his maternal aunt.

AFFIRMED.