

IN THE COURT OF APPEALS OF IOWA

No. 8-737 / 08-1215
Filed October 1, 2008

**IN THE INTEREST OF A.C., B.P., and C.C.,
Minor Children,**

J.C., Mother,
Appellant,

C.P., Father of B.P.,
Appellant.

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

A mother appeals from the juvenile court order that adjudicated her
children as in need of assistance. **REVERSED AND REMANDED.**

John Bishop, Cedar Rapids, for appellant mother.

Cory Goldenspoh, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant
County Attorney, for appellee State.

Jeannine Roberts, Cedar Rapids, for minor children.

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

HUITINK, P.J.

A mother appeals from the juvenile court order adjudicating her three children as in need of assistance.

I. Background and Facts

Jamie is the mother of three children, A.C., age ten; B.P., age five; and C.C., age four. Each child has a different father, but Jamie is currently involved with B.P.'s father, Chris, and pregnant with his child. The family came to the attention of Iowa Department of Human Services (DHS) on September 14, 2007, when DHS received a report of possible sexual abuse of A.C. Jamie reported that when she arrived home she found A.C. in bed with Chris and A.C. was wearing only a t-shirt and underwear. A.C. and Jamie denied any sexual abuse occurred, and the investigating social worker determined there was insufficient evidence to establish Chris sexually abused A.C. The social worker's report nevertheless stated:

It is this worker's experience in working with Jamie that she lacks the insight in what is required to keep her children safe. Jamie did not express any worry or concern regarding the allegation. Jamie expressed concern for her relationship with Chris and only when pushed did she report that she would prioritize her children before her relationship with Chris. There is reason to believe this assessment is limited due to Jamie's unwillingness to fully disclose information. I am not confident that Jamie will follow through with getting [A.C.] counseling.

In a subsequently filed petition, the State claimed all of Jamie's children were children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(1) (children suffered or likely to suffer harmful effects as a result of mental injury caused by acts of parent), 232.2(6)(c)(2) (children suffer or likely suffer harmful effects of parent's failure to supervise children), 232.2(6)(d)

(children have been or likely to be sexually abused by parent or member of household), 232.2(6)(h) (parent's mental capacity or condition results in children not receiving adequate care).

The juvenile court's resulting adjudicatory order includes the following findings of fact:

The evidence establishes that ongoing contact between [Chris] and Jamie's children places her children at imminent risk of harm. Jamie is unable or unwilling to recognize that risk. Although Jamie testified at this hearing that she would not resume her adult relationship with Chris, she is quite willing to allow her children to have contact with him. Jamie has minimized the risk of sexual abuse to [A.C.]. She minimizes the risk of physical harm to her children by allowing them to be in the care of Chris, considering his history of violence and substance abuse.

Therefore, based upon the evidence presented, the Court finds that the State has met its burden in proving that [A.C.], [B.P.], and [C.C.] are children in need of assistance as set out in the State's petition.

On appeal Jamie challenges the sufficiency of the evidence supporting the adjudication of her children as CINA on any of the grounds alleged in the petition.

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). We review both the facts and the law, and adjudicate rights anew. *Id.* Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The State has the burden of proving the allegations in the CINA petition by clear and convincing evidence. Iowa Code § 232.96(2). Clear and convincing evidence means no serious or substantial doubt exists about the correctness of the conclusions drawn from the evidence. *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa Ct. App. 1995). Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Merits

We initially note the record is devoid of any proof that one or more of Jamie's children have suffered or are likely to suffer a mental injury due to a parental act, sexual abuse by a custodian, or that any of their parents has a mental incapacity or condition resulting in lack of adequate care. We accordingly reverse the trial court's adjudicatory order to the extent it is based on Iowa Code sections 232.2(6)(c)(1), 232.2(6)(d), and 232.2(6)(n).

To adjudicate one or all of James's children as CINA pursuant to section 232.2(6)(c)(2) the State must establish by clear and convincing evidence that the children have suffered or are imminently likely to suffer harmful effects as a result of failure of the children's parent, guardian, or custodian or other member of the household in which the children reside to exercise a reasonable degree in supervising the children.

Jamie correctly notes that there were no allegations any of the children were harmed by her failure to exercise a reasonable degree of care in their supervision. The remaining and controlling issue is therefore whether any or all of her children are imminently likely to suffer harmful effects as a result of Jamie's failure to exercise a reasonable degree of care in their supervision.

The State's theory of imminent risk of harm is based on Jamie's relationship with Chris. The State contends Chris's substantial criminal record is enough to establish the requisite risk of harm to the children. We disagree.

The record indicates Jamie has had a six-year relationship with Chris. There is no evidence Chris abused Jamie or any of her children in the course of their relationship or that the children suffered any other adjudicatory harm.

Moreover, the State's theory ignores the fact that the genesis of these proceedings was Jamie's reported concerns for A.C. Lastly, we note that Chris was incarcerated at the time of the adjudicatory hearing and the juvenile court's resulting conclusion that "Chris is currently in prison and presents no immediate risk of harm to the children." Because the State's theory of imminent harm is not supported by clear and convincing evidence, the juvenile court's order adjudicating Jamie's children as CINA is reversed and remanded with instructions to dismiss the State's CINA petition.

REVERSED AND REMANDED.

Eisenhauer, J., concurs; Vogel, J., dissents.

VOGEL, J. (dissenting)

I respectfully dissent and would affirm the juvenile court's order adjudicating the three children CINA. Significantly, the provisions of Iowa Code chapter 232 are preventative as well as remedial, *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990), and their goal is to prevent probable harm; they do not require delay until harm has occurred. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). Moreover, we look to the whole body of a parent's past performance in CINA cases because that performance may be indicative of the quality of the future care that the parent is capable of providing. See *In re L.L.*, 459 N.W.2d at 493.

In particular, I would conclude the State proved by clear and convincing evidence its petition under Iowa Code section 232.2(6)(c)(2). In addition to those fact findings recited by majority, I am influenced by the fact that Jamie reported that Chris was laying on top of A.C. when she found them in the bed. While Chris was indeed incarcerated at the time of the adjudicatory hearing, he was scheduled to be released in October of 2008. Chris's history of violent behavior with other women, extensive drug use, and Jamie's assessment of Chris as the first decent man she has met, supports the court's conclusion that Jamie is unwilling or unable to appreciate the risk posed by Chris to the children. Therefore, I would affirm the district court's finding under Iowa Code section 232.2(6)(c)(2).