

IN THE COURT OF APPEALS OF IOWA

No. 8-965 / 08-1604
Filed December 31, 2008

IN THE INTEREST OF R.J.-B.,
Minor Child,

L.B.J., Mother,
Appellant,

H.J., Father,
Appellant.

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

A mother and father appeal the juvenile court order adjudicating their son, R.J.-B., a child in need of assistance. **AFFIRMED.**

Patricia J. Lipski, Fairfield, for appellant mother.

William C. Glass, Keosauqua, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Tim W. Dille, County Attorney, and Patrick McAvan, Assistant County Attorney, for appellee State.

Mary Baird Krafka of Krafka Law Office, Ottumwa, for minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

A mother and father appeal the juvenile court order adjudicating their son, R.J.-B., a child in need of assistance. We affirm.

I. Background Facts and Prior Proceedings.

R.J.-B. most recently came to the attention of the Iowa Department of Human Services (DHS) in May 2008 when a child protection worker, Deb Johnson, received an allegation that R.J.-B.'s mother had threatened to kill him with a knife. Johnson went to speak with R.J.-B. at his school. R.J.-B. said he had been accused of stealing gum from a store, that he had been confronted by his mom, and that she pulled a butcher knife on him. He stated that his father took the knife from her.

Johnson, accompanied by Sergeant G. A. Francisco went to speak to R.J.-B.'s mother, L.B.J., who indicated she would not answer any questions and wished to contact her lawyer. Johnson left her business card.

Johnson later received a telephone call from Francisco indicating R.J.-B. had been dropped off at the law enforcement center by his father, who had said nothing to anyone at the center. Johnson went to the law enforcement center and spoke with Francisco.

She learned that R.J.-B.'s father, H.J., had called the center some time after dropping off R.J.-B. and told them to find a place for his son and that he was not going to take him home. H.J. was told to come and get R.J.-B. However, when he arrived, officers smelled alcohol on his breath and arrested him.¹ In light of the allegations of the knife and H.J.'s arrest, a determination was made

¹ Apparently there was also a warrant out for his arrest.

that R.J.-B. would not be safe going home and Johnson was called. Johnson spoke with L.B.J. at the law enforcement center and asked her to sign a voluntary placement agreement, which she refused to do. Johnson then arranged for R.J.-B. to be placed in a shelter because no foster home placement was available.

An application for temporary removal and a CINA petition were filed. A temporary removal hearing was held. R.J.-B.'s parents were given notice, but did not attend. The parties present, including R.J.-B.'s guardian ad litem, stipulated that an earlier ex parte removal could be confirmed and that legal custody should remain with DHS for purposes of placement in shelter/foster care.

An adjudicatory hearing was held on August 6 and 13, 2008. L.B.J. testified that R.J.-B. was living with L.B.J.'s mother (R.J.-B.'s grandmother) and two siblings in an apartment before being placed in the shelter. The apartment had an occupancy limit of four persons and, consequently, L.B.J. was living in a homeless shelter; R.J.-B.'s father, H.J., was living with a friend.

Johnson testified about the circumstances leading to R.J.-B.'s removal from parental custody. She stated that both L.B.J. and H.J. adamantly denied any incident involving a knife, but acknowledged there had been a confrontation because they were upset after receiving information that R.J.-B., while out with his eleven-month-old brother, and taken some gum from a convenience store. Johnson also testified that H.J. told her, "If I didn't drop him off there, I was gonna do something to seriously hurt this kid." She testified that the parents had long-term issues with R.J.-B. and his behavior, including his lying and stealing, and that their frustration with R.J.-B. placed him at risk. Johnson had further

discussions with R.J.-B., who recanted his allegations, but would not talk about matters at home. Consequently, Johnson testified she did not confirm the initial abuse report.

Johnson testified that she continued to have concerns about R.J.-B.'s safety, however, due to prior CINA adjudications related to founded abuse and denial of supervision reports in 2004 and 2005. She testified that R.J.-B. had previously been removed from L.B.J.'s home and had stayed several months at the Independence Mental Health Institute. He returned home in March 2006 and was to continue individual therapy and medication. She stated R.J.-B. was no longer on medication and was not receiving individual therapy.

Johnson testified R.J.-B. continues to have behavioral and mental-health issues and he was having behavior problems at the shelter. She testified that based upon evaluations by Drs. Jerald Catron and Christopher Okiishi, she recommended that R.J.-B. receive individual counseling. She stated she had concerns about a lack of parental involvement and cooperation and the possibility of physical abuse, particularly if there were no services or adjudication.

H.J. testified that R.J.-B. had been caught shoplifting in the past and that on the day he dropped R.J.-B. off at the law enforcement center it was a result of another instance of shoplifting and R.J.-B. making allegations about his mother's behavior. H.J. testified he told R.J.-B.:

“Well, you know what? Nobody wants to hold you accountable for your actions, so you don't want to behave, you don't want to listen to me, you don't want to listen to your mom, so I'm gonna take you to where they deal with people that don't – don't listen and I'm gonna take you to where they don't -- where they deal with people who commit crimes. If you don't want to listen to us, I'm gonna take you there,” and I took him down to the law center where there's –

under my impression, there are responsible adults there. It's not an unsupervised area. There are responsible adults there, police officers, so they're – they're sworn to be responsible.

Dropped him off, waited in the parking lot until he walked through the two doors that are in the law center, and then I left. I called about a half an hour later to check on him to make sure that, you know, he was okay, and they told me that I need to come get him, that "It's not our job to deal with your child." . . .

I said, "Well, I did what I've been told to do. Someone commits a crime, you report them to the law center. You can't handle the situation, you report them to the law center because that's how stuff gets done."

H.J. further testified that when he took R.J.-B. to the law enforcement center:

I was exhausted. I was at my wit's end. I had done – I had jumped through every possible hoop that I could jump through with DHS in his previous CINA case. I had been branded a bad parent and my wife had been branded a bad parent. It was our fault that he was the way that he was. At that point in time I had just had it. I didn't know anything else that could be done.

H.J. testified that R.J.-B. could safely be returned home.

On August 26, 2008, the juvenile court filed an order finding R.J.-B. a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2007) (child is likely to suffer harm due to parents' failure to exercise care in supervising child) and ordered that he remain in the custody of the DHS.

A dispositional hearing was held on October 8, 2008, and an order was filed on October 21, 2008. In the dispositional order, the juvenile court noted that in June 2008 R.J.-B. had undergone a psychological assessment with a result diagnosis of Oppositional Defiant Disorder, and a psychiatric assessment with the resultant diagnoses of Adjustment Disorder with Mixed Disturbance of Emotion and Conduct, and Attention Deficit Hyperactivity Disorder. The juvenile court noted that Dr. Okiishi found it alarming that R.J.-B.'s family had "essentially

taught him to stonewall investigations.” Dr. Okiishi had recommended residential treatment if R.J.-B.’s behavior did not improve.

R.J.-B. was placed in a residential program in September where he “was very obstinate with authority, struggles with accepting consequences and is regularly aggressive and violent toward staff when being confronted.” The court noted that the parents agreed that R.J.-B. needed the type of treatment he was receiving, but they believed he could be provided the treatment without DHS’s involvement. The court found:

[I]t is clear that [R.J.-B.] is exhibiting many of the same behaviors today as he was during that prior [CINA] proceeding. The parents have had an opportunity to attempt to deal with [R.J.-B.’s] behaviors, but their answer was to instill in him a fear of disclosing family information to others, and to abandon him at a police station when his behaviors became too difficult to cope with.

The court also found the parents had shown their commitment to R.J.-B. by “becoming involved in his residential treatment process by communicating with staff, attending staffing and maintaining phone contact with [R.J.-B.]” The court confirmed the finding that R.J.-B. was a child in need of assistance; continued temporary guardianship and legal custody with DHS for placement in residential treatment; and set a time for a review hearing.

Mother and father now appeal the adjudication and removal.

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. *Id.*

III. Merits.

To adjudicate R.J.-B. as a child in need of assistance (CINA) pursuant to section 232.2(6)(c)(2) the State must establish by clear and convincing evidence that he has suffered or is imminently likely to suffer harmful effects as a result of failure of the child's parent, guardian, or custodian or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child. Again, our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

Both parents claim the evidence at the adjudicatory hearing was insufficient to prove R.J.-B. was in need of assistance. While they agree that his current placement is appropriate, they believe DHS need not be involved.

Upon our de novo review of the record, we find there is clear and convincing evidence to support a finding that R.J.-B. is imminently likely to suffer from a lack of needed treatment and supervision if returned to his mother and father at this time without the involvement of DHS. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (finding "[t]he future can be gleaned from evidence of the parents' past performance and motivations").

We commend the parents in their recognition that R.J.-B.'s current placement is appropriate. They wish that placement be continued without DHS involvement, but we find it unlikely that R.J.-B. would receive appropriate treatment absent the CINA adjudication. We conclude R.J.-B.'s interests are best served by adjudicating him a child in need of assistance.

Accordingly, we affirm the decision of the juvenile court.

AFFIRMED.